MONTANA LEGISLATIVE HISTORY

Chapter 491 19 97

Bill H 561 S _____ Original bill & history ✓ C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	Feb 19	✓ C	Hearing Date(s)	Mar 19	✓ C
	Feb 20	✓ C		Apr 07	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

5/02 SIGNED BY GOVERNOR
CHAPTER NUMBER 525
EFFECTIVE DATE: 10/01/97

HB 560 INTRODUCED BY PECK *LC0929 DRAFTER: MCCLURE*

IMPLEMENT THE MORATORIUM ON THE CREATION OF NEW SCHOOL DISTRICTS BY ELIMINATING THE PROCEDURES FOR CREATION OF A NEW ELEMENTARY OR HIGH SCHOOL DISTRICT

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	95	0
2/26	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/17	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	49	1
3/28	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/05	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 219		
	EFFECTIVE DATE: 07/01/97		

HB 561 INTRODUCED BY KASTEN, ET AL. *LC0537 DRAFTER: HEIMAN*

FURTHER THE RENEWAL OF STATE GOVERNMENT BY HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO TAXATION		
2/17	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/08	2ND READING PASSED	95	4
3/10	3RD READING PASSED	93	7
	TRANSMITTED TO SENATE		
3/11	FIRST READING		
3/11	REFERRED TO TAXATION		
3/19	HEARING		
4/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/09	2ND READING CONCURRED	50	0
4/10	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	98	1
4/15	3RD READING CONCURRED AS AMENDED	92	5
4/21	SIGNED BY SPEAKER		

4/21 SIGNED BY PRESIDENT
4/24 TRANSMITTED TO GOVERNOR
5/02 SIGNED BY GOVERNOR
CHAPTER NUMBER 491
EFFECTIVE DATE: 07/01/97—SECTIONS 1, 20 & 35-40
EFFECTIVE DATE: 01/01/98—SECTIONS 3-7, 9-12, 17-19, 21-23, 25-32 & 34
EFFECTIVE DATE: 01/01/99—SECTIONS 2, 8, 13-16, 24 & 33

HB 562 INTRODUCED BY COBB *LC1312 DRAFTER: WILLIAMS*

PROVIDE CONSERVATION DISTRICTS WITH ADMINISTRATIVE PENALTY AUTHORITY OVER A VIOLATION OF DISTRICT REGULATIONS

2/15 INTRODUCED
2/15 FIRST READING
2/15 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
2/18 HEARING
2/18 TABLED IN COMMITTEE
2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
DIED IN COMMITTEE

HB 563 INTRODUCED BY PECK, ET AL. *LC0050 DRAFTER: MCCLURE*

REQUIRE VOTER APPROVAL FOR THE BASE BUDGET OR THE OVER-BASE BUDGET OF A SCHOOL DISTRICT FOR THE PORTION OF THE BUDGET THAT EXCEEDS THE GREATER OF EITHER THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB

2/15 INTRODUCED
2/15 FIRST READING
2/15 REFERRED TO EDUCATION & CULTURAL RESOURCES
2/15 FISCAL NOTE REQUESTED
2/19 HEARING
2/19 FISCAL NOTE RECEIVED
2/19 TABLED IN COMMITTEE
2/19 FISCAL NOTE PRINTED
2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
DIED IN COMMITTEE

HB 564 INTRODUCED BY DOWELL *LC1233 DRAFTER: MCCLURE*

AUTHORIZE A SCHOOL DISTRICT THAT PROVIDES EDUCATIONAL SERVICES TO AN OUT-OF-DISTRICT STUDENT PURSUANT TO A TUITION AGREEMENT TO ISSUE AND SELL SHORT-TERM OBLIGATIONS IN THE CURRENT FISCAL YEAR TO PAY THE COSTS OF EDUCATIONAL SERVICES FOR WHICH TUITION PAYMENT WILL NOT BE RECEIVED UNTIL THE ENSUING FISCAL YEAR

2/15 INTRODUCED
2/15 FIRST READING
2/15 REFERRED TO EDUCATION & CULTURAL RESOURCES
2/15 FISCAL NOTE REQUESTED
2/19 HEARING
2/19 FISCAL NOTE RECEIVED
2/19 FISCAL NOTE PRINTED
2/20 COMMITTEE REPORT—BILL PASSED AS AMENDED
2/25 2ND READING DO PASS MOTION FAILED 49 50

House BILL NO. 561

INTRODUCED BY Larson

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MOTORCYCLE SAFETY TRAINING FEE; AMENDING SECTION 20-7-514, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-7-514, MCA, is amended to read:

"**20-7-514. Motorcycle registration fee -- exemptions.** (1) A motorcycle safety training fee of ~~$2.50~~ $5 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the state traffic education account, as provided in 20-7-504.

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; or

(c) displaying dealer or wholesaler plates, as provided in 61-4-103, while owned by a dealer or wholesaler."

NEW SECTION. **Section 2. Effective date.** [This act] is effective January 1, 1996.

-END-

STATE OF MONTANA - FISCAL NOTE
Fiscal Note for HB0561, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act furthering the renewal of state government by harmonizing the definitions of "wages" and "employment"; by reengineering, restructuring, and combining the reporting and remittance of employer taxes; by coordinating the administration of the state's income tax and old fund liability tax withholding, unemployment insurance tax, and the employers' share of the old fund liability tax so that all reports and remittances must be made to the department of revenue thereby providing an employer the convenience of dealing with only one state agency.

ASSUMPTIONS.

1. Section 19 of this bill would amend 39-51-204(3)(a), to make church employees (non-clergy) subject to Unemployment Insurance tax. Many churches currently elect to have UI coverage on their employees. As this section is written, UI benefits would become available to church employees. Also, The UI system does not track or collect information that would allow us to determine the number of potential claimants that would be able to draw benefits. The impact to the UI Trust Fund would be minimal.
2. Section 19 of this bill would amend 39-51-204(1)(d), to exempt licensed real estate brokers or sales persons; make insurance and securities salespersons subject to UI. Also, 39-51-204(1)(k) eliminates the exclusion for those who perform service in the employ of a hospital if the service is performed by a patient of the hospital. And, 39-51-201(1)(o) excludes service performed by an individual who is sentenced to perform court-ordered community service or similar work. There would be minimal impact to the UI Trust Fund. There is no data available on these groups to determine how many would draw benefits or how many more employers would pay UI tax.

FISCAL IMPACT:

Expenditures:
The consolidation of payroll-based functions proposed in this bill will require one-time implementation costs of $973,000 in FY98 and $359,000 in FY99 as follows:

	FY98 Difference	FY99 Difference
Contracted Services	$247,000	$197,000
Bus. Process Reengineering	316,000	0
Computer Processing	210,000	162,000
Equipment	200,000	0
Total	$973,000	$359,000

These costs will be funded 50% general fund, and 50% federal funds.These initial implementation costs are based upon a proposed implementation date of January 1, 1999 for the new system.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION

A cost/benefit feasibility study performed by Andersen Consulting, projects the proposal to be cost effective, within five years. Andersen Consulting estimated integration benefits to the state of Montana to be $1 - $5 million over five years:

A. System Benefits(in millions)

	Low	High
Cost Reductions: Personnel, Space System Charges	$ 2.2	$ 3.1
Revenue Enhancements Audit Revenue, Increased Collections	$ 3.2	$ 6.4
TOTAL BENEFITS	$ 5.4	$ 9.5

Dave Lewis 2-18-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BETTY LOU KASTEN, PRIMARY SPONSOR DATE

(continued)

LONG-TERM IMPACTS, cont.

B. System Costs (in millions).

Audit personnel, Space and relocation, Business Process Reengineering, and Systems TOTAL COSTS	$(4.3)	$(4.4)
C. NET INTEGRATION BENEFITS	$ 1.1	$ 5.1

The Andersen estimate includes systems costs of $885,600 ($285,600 to modify the current Withholding System plus $600,000 to maintain and enhance the system during the two-year re-write period). After the study was completed, the Department of Revenue determined and Andersen concurred, it was not cost beneficial to modify the current system given the age and condition of the current system. The technology direction of the Department is reflected in House Bill 188.

The Departments have since revised the Andersen estimates to reflect updated revenue estimates, benefits and cost savings and system costs. The Departments estimate benefits will exceed costs by $1 million over five years.

Employer Savings:

Andersen Consulting, in their cost/benefit analysis, estimated that approximately 28,300 Montana employers would each save $400 - $1,000 per year through reduced compliance burden under the new initiative. The firm estimates total savings each year to Montana employers of nearly $13 million. That figure is based upon the full integration of employer registration, wage reporting and report processing, enforcement, audit and examination, and appeals and dispute resolution between the two agencies.

Other Impacts:

Section 23 of this bill amends 39-51-1301 which allows for penalty and interest as provided in Section 16 of this same bill. Section 16 of this bill states that a $50 penalty will be assessed for a delinquent report. It is estimated that currently there are an average of 6,259 UI notices of delinquent reports. A $50 penalty would generate $312,966. Assuming that these same employers who are assessed the penalty are also delinquent on income tax withholding and old fund liability tax, the UI portion of the penalty assessment would be 1/3 of the $312,966, or $104,322.

Section 16 of this bill allows in 15-30-209 (3) the penalty due to change from 10% and 15% on unpaid taxes to 2% per month with a maximum of 24%. We do not have data that track the number of employers that have paid their delinquent accounts by the 8-9 month period or the point to where the 2% per month would exceed the current UI rate of 10%-15%. It is therefore, not possible to determine the increase or decrease resulting from this change in interest rate.

In Section 16 of this bill, 15-30-209 (5) would increase the penalty assessed for filing a subpoena. Currently UI assesses a $40 penalty and this bill would change that penalty to $50. There has been an average of 207 subpoenas filed for a penalty of $8,280. The additional $10 charge would result in another $2,070 in UI penalty collected.

In Section 16, in 15-30-209 (5)b allows for an additional $100 in penalty charged to employers who fail to honor the subpoena. There are approximately 18 employers a year who fall into this category which would create an additional $1,800 in penalty revenue.

Additional revenues to the Unemployment Insurance Trust Fund would be minimal.

Penalty and Interest revenue would increase possibly $108,192 in CY99, only one quarter of which would be attributable to FY99:

6,259 delinquent notice @$50 each	$104,322
207 subpoenas additional $10 each	2,070
18 fail to respond to subpoena @$100 ea	$ 1,800
	$108,192

03277 UI Penalty & Interest

HEARING ON HB 561

Opening Statement by Sponsor:

Rep. Betty Lou Kasten, House District 99, opened the hearing on HB 561 which would streamline tax collection, appeals, etc. **EXHIBIT 1.** *{Tape: 1; Side: A; Approx. Time Count: 1.4.}*

Proponents' Testimony:

Mary Bryson, Director, Department of Revenue. *{Tape: 1; Side: A; Approx. Time Count: 3.2.}*

Pat Haffey, Department of Labor. *{Tape: 1; Side: A; Approx. Time Count: 7.7.}*

Jeff Miller, Department of Labor. **EXHIBIT 2.** *{Tape: 1; Side: A; Approx. Time Count: 9.1.}*

Dennis Zeiler, Administrator, Department of Labor. *{Tape: 1; Side: A; Approx. Time Count: 25.0.}*

David Owen, Montana Chamber of Commerce. *{Tape: 1; Side: A; Approx. Time Count: 41.1.}*

Bob Gilbert, Montana Magistrates Association. *{Tape: 1; Side: B; Approx. Time Count: 1.3.}*

Melissa Case. *{Tape: 1; Side: B; Approx. Time Count: 3.8.}*

Don Judge, AFL-CIO. *{Tape: 1; Side: B; Approx. Time Count: 8.2.}*

Nancy Butler, State Fund. *{Tape: 1; Side: B; Approx. Time Count: 10.5.}*

Tom Harrison, Association of CPA's. *{Tape: 1; Side: B; Approx. Time Count: 11.4.}*

Kathleen Morehouse, Capital Sports and Western. *{Tape: 1; Side: B; Approx. Time Count: 11.9.}*

Gloria Pladichuk, Richland Development. *{Tape: 1; Side: B; Approx. Time Count: 14.6.}*

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 15.2.}

Closing by Sponsor:

Rep. Kasten closed. *{Tape: 1; Side: B; Approx. Time Count: 34.0.}*

HEARING ON HB 498

Opening Statement by Sponsor:

Rep. Matt Brainard, House District 62, opened the hearing. The bill would establish a flat fee system for taxing vehicles. *{Tape: 1; Side: B; Approx. Time Count: 35.5.}*

Proponents' Testimony:

None.

Opponents' Testimony:

Chet Kinsey, representing low income individuals. *{Tape: 1; Side: B; Approx. Time Count: 37.8.}*

Vivian Moore, People's Law Center. *{Tape: 1; Side: B; Approx. Time Count: 40.5.}*

Gordon Morris, MACO. *{Tape: 1; Side: B; Approx. Time Count: 41.1.}*

Informational Testimony:

Dean Roberts, Administrator, Vehicle Registration Division. *{Tape: 2; Side: A; Approx. Time Count: 0.2.}*

Dave Galt, Department of Transportation. *{Tape: 2; Side: A; Approx. Time Count: 2.3.}*

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 3.8.}

Closing by Sponsor:

Rep. Brainard closed the hearing. *{Tape: 2; Side: A; Approx. Time Count: 30.0.}*

Chairman Hibbard appointed a sub-committee to consider tax bills related to taxation of vehicles. Members of the sub-committee are Rep. Story, Chairman, Rep. Wells and Rep. Ryan. *{Tape: 2; Side: A; Approx. Time Count: 31.7.}*

HOUSE TAXATION COMMITTEE

ROLL CALL

DATE OF MEETING: February 19, 1997

Name	Present	Absent	Excused
Rep. Peggy Arnott	✓		
Rep. Paul Bankhead	✓		
Rep. John Bohlinger	✓		
Rep. Bill Carey	✓		
Rep. Alvin Ellis, Jr.	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Dan Harrington	✓		
Rep. Rick Jore	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Robert Story	✓		
Rep. Richard Simpkins	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Jack Wells	✓		
Chairman Chase Hibbard	✓		

VISITOR REGISTER

HOUSE TAXATION COMMITTEE

DATE: 2/19/97

BILL NO: HB 561 **SPONSOR:** Rep. Kasten

NAME AND ADDRESS (PLEASE PRINT)	REPRESENTING	TYPE OF WITNESS		
		Informational	Support	Oppose
Dennis Burr	MOTIAX		✓	
Jeff Miller	DOR		✓	
Malene Marchand	Capital Sports + Western		✓	
Mary Bryson	DOR		✓	
Pat Haffey	DLI		✓	
Don Judge	MT STATE AFL-CIO		✓	
Bob Gilbert	Job Service/Emp. Council		✓	
David Owen	MT Chamber		✓	
Nancy Butler	State Fund, MMIA, AIA, MT Self Insurers		✓	
Glenn Palatchek	Richland Develop.		✓	
Riley Johnson	NFIB		✓	

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.

Gordon Morris, Montana Association of Counties. *{Tape: 2; Side: B; Approx. Time Count: 12.1.}*

Opponents' Testimony:

None.

Informational Testimony:

Don Hoffman, Department of Revenue. *{Tape: 2; Side: B; Approx. Time Count: 13.4.}*

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 14.8.}

Closing by Sponsor:

Rep. Hanson closed.

EXECUTIVE ACTION ON HB 561

Motion:

Rep. Harper moved the amendments to HB 561 do pass. **EXHIBIT 9.** On a voice vote, the motion passed 20 - 0. *{Tape: 2; Side: B; Approx. Time Count: 39.3.}*

Motion/Vote:

Rep. Harper moved that HB 561 do pass as amended. On a voice vote, the motion passed 18 - 2, with Reps. Jore and Arnott voting no. *{Tape: 3; Side: A; Approx. Time Count: 4.7.}*

EXECUTIVE ACTION ON HB 536

Motion/Vote:

Rep. Bohlinger moved the amendments to HB 536. **EXHIBIT 10.** On a voice vote, the motion passed 18 - 1. *{Tape: 3; Side: A; Approx. Time Count: 7.3.}*

Motion\Vote:

Rep. Bohlinger moved that HB 536 as amended do pass. On a roll call vote, the motion passed, 15 - 5, with Reps. Orr, Wells, Jore, Simpkins and Bankhead voting no. *{Tape: 3; Side: A; Approx. Time Count: 16.4; Comments: Discussion on the motion and the vote are continued on Tape 3 B.}*

{Tape: 3; Side: B; Approx. Time Count: 7.1; Comments: Adjourn.}

EXHIBIT 9
DATE 2/20/97
HB 561

Amendments to House Bill No. 561
First Reading Copy

Requested by DOR
For the Committee on Taxation

Prepared by Lee Heiman
February 19, 1997

1. Page 14, lines 3 through 6.
Strike: ": (A)" on lines 3 and 4
Strike: ";" on line 4 through "employer" on line 6

2. Page 15, lines 19 and 20.
Following: "employer" on line 19
Insert: "for employees,"
Strike: "pursuant" on line 19 through "employees" on line 20

3. Page 15, line 21.
Following: "pension"
Insert: "pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code"

4. Page 25, line 26.
Strike: "(1)(b)"
Insert: "(1)(a)"

5. Page 27, lines 21 through 24.
Strike: ": (A)" on lines 21 and 22
Strike: ";" on line 22 through "employer" on line 24

6. Page 27, lines 26 and 27.
Following: "employer"
Insert: "for employees"
Strike: "under" on line 26 through "employees" on line 27

7. Page 27, line 29.
Following: "pension"
Insert: "pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code"

8. Page 35, line 5.
Strike: "of revenue"

9. Page 39, line 8.
Following: "~~such~~"
Insert: "an instructional, research, or principal administrative"

10. Page 41, line 6.
Strike: "severance or continuance pay,"
Strike: ", and"
Insert: "or"

11. Page 41, lines 11 through 14.
Strike: ": (i)" on lines 11 and 12
Strike: ";" on line 12 through "employer" on line 14

12. Page 41, lines 26 and 27.
Following: "employer"
Insert: "for employees"
Strike: "under" on line 26 through "providing" on line 27

13. Page 41, line 28.
Following: "pension"
Insert: "pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code"

14. Page 49, lines 2 through 5.
Strike: ": (A)" on lines 2 and 3
Strike: ";" on line 3 through "employer" on line 5

15. Page 49, lines 22 and 23.
Following: "employer" on line 22
Insert: "for employees"
Strike: "under" on line 22 through "employees" on line 23

16. Page 49, line 24.
Following: "pension"
Insert: "pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code"

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on March 19, 1997, at 8:02 a.m., in Room 413.

ROLL CALL

Members Present:
Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Services Division
Meg Angell, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 561; HB 536
Executive Action: HB 444

HEARING ON HB 561

Sponsor: **REP. BETTY LOU KASTEN, DISTRICT 99, BROCKWAY**

Proponents: **Mary Bryson, Department of Revenue**
Pat Haffey, Department of Labor & Industry
Jeff Miller, Department of Revenue
Dennis Zeiler, Department of Labor & Industry
Tom Harrison, Montana CPA's
David Owen, Montana Chamber of Commerce
Riley Johnson, National Federation of Independent Business (NFIB)
Bob Gilbert, Job Servers Employment Council
Nancy Butler, State Funds
Maxine Morehouse, Capital Sports and Western

EXHIBIT 1
DATE 2/19/97
HB 561

HB 561

Montana Department of REVENUE

STATE OF MONTANA - DEPARTMENT OF LABOR AND INDUSTRY

Project History

- HB 550

Project History

- HB 550
  - Cost/benefit analysis

Project History

- HB 550
  - Cost/benefit analysis
  - Standardized laws

Project History

- HB 550
  - Cost/benefit analysis
  - Standardized laws
  - Employer/employee dispute resolution (Independent Contractor Central Unit)

Project History

- HB 550
  - Cost/benefit analysis
  - Standardized laws
  - Employer/employee dispute resolution (Independent Contractor Central Unit)
  - Joint registration

Project History

- HB 550
  - Cost/benefit analysis
  - Standardized laws
  - Employer/employee dispute resolution (Independent Contractor Central Unit)
  - Joint registration
  - Sharing of audit Information

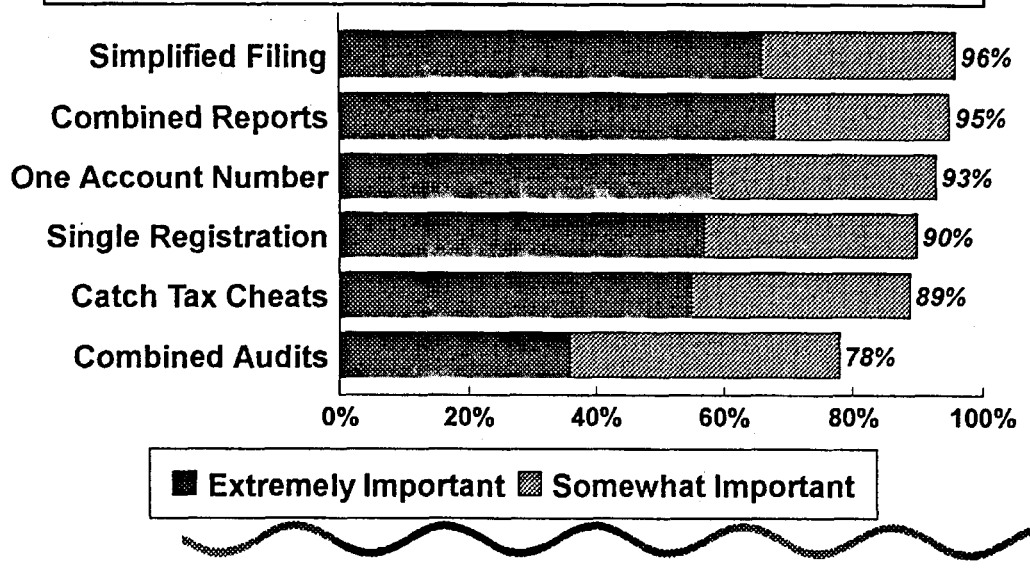
Project History

- Andersen Consulting Cost/Benefit Analysis

Project History

- Andersen Consulting Cost/Benefit Analysis
  - Yearly savings of $400 to $1000 for Montana employers

Question: Assuming the proposed consolidation took place, how would you view the importance of each of the following as a function for this new agency?



Verbatim Responses to Question 8a. Can you tell me in your own words why you favor this proposed consolidation?

- "It's the same numbers I fill out for both departments and I don't see why I can't just fill out one form. It would make things much more simplified."
- "It doesn't make sense to provide the same information to two governmental departments in the same town."
- "It would reduce paperwork and cost. I think that would save us some money."

Project History

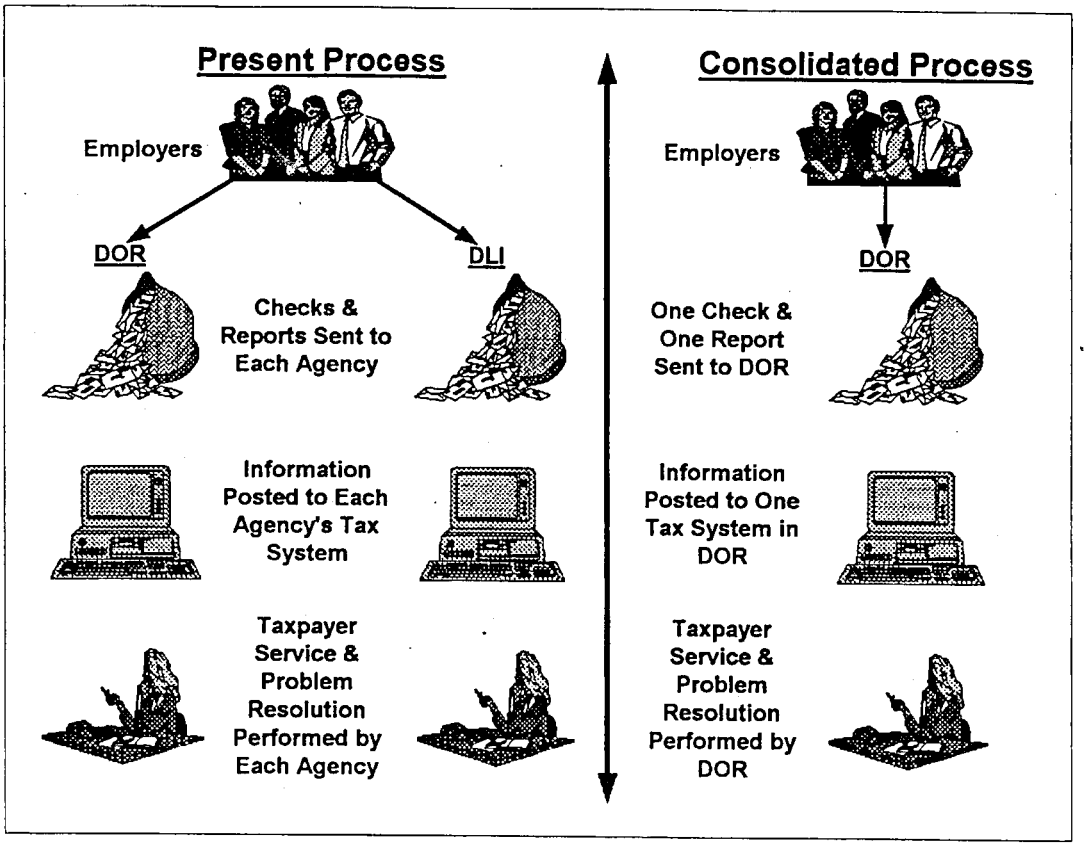
- Andersen Consulting Cost/Benefit Analysis
  - Yearly savings of $400 to $1000 for Montana employers
  - Total savings of $13 million per year

Project History

- Andersen Consulting Cost/Benefit Analysis
  - Yearly savings of $400 to $1000 for Montana employers
  - Total savings of $13 million per year
  - State agency savings of $1 million over 5 years

Comparison of Business Functions

Business Function	DOR	DLI
Employer Registration	X	X
Remittance Processing	X	X
Employee Wage Reporting	X	X
Penalty & Interest Waivers	X	X
Year-End Reconciliation & W-2 Processing	X	
Delinquent Accounts Receivable & Report Collections	X	X
Compliance	X	X
Audit Processing	X	X
Refunds	X	X
Taxpayer Services	X	X
Appeals	X	X
Records & Document Management	X	X
Report Processing	X	X
Experience Rating		X
Status Determination		X


Present Process
Consolidated Process
Employers
Employers
DOR
DLI
DOR
Checks & Reports Sent to Each Agency
One Check & One Report Sent to DOR
Information Posted to Each Agency's Tax System
Information Posted to One Tax System in DOR
Taxpayer Service & Problem Resolution Performed by Each Agency
Taxpayer Service & Problem Resolution Performed by DOR

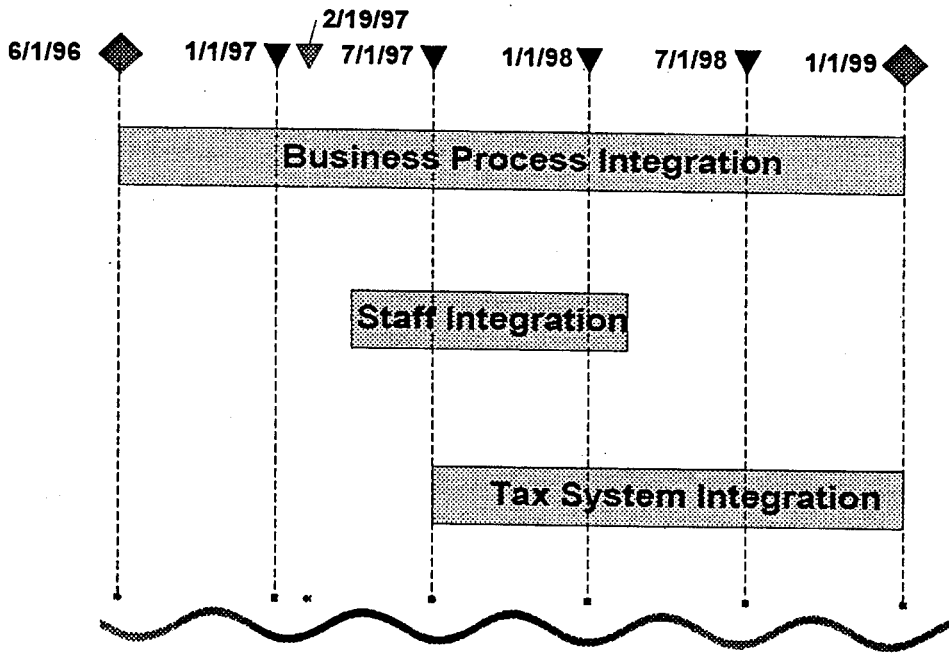
Reduced Administrative Costs

- 9 to 16 less FTE after full integration

Reduced Administrative Costs

- 9 to 16 less FTE after full integration
- Elimination of MAC system charges

Project Timeline



HB 561

Montana Department of REVENUE

STATE OF MONTANA - DEPARTMENT OF LABOR AND INDUSTRY

Section by Section Analysis

- Section 1
  Harmonize confidentiality statutes

Section by Section Analysis

- Section 1
  Harmonize confidentiality statutes
- Section 2
  Establish payment distribution methodology

Section by Section Analysis

- Section 1
  Harmonize confidentiality statutes
- Section 2
  Establish payment distribution methodology
- Sections 3, 4, 22, and 24
  Harmonize statutes of limitations

Section by Section Analysis

- Sections 5, 6, 19, and 28
  Consistency in inclusions/exclusions from employment

Section by Section Analysis

- Sections 5, 6, 19, and 28
  Consistency in inclusions/exclusions from employment
- Sections 7, 9, 21, and 26
  Single appeals process

Section by Section Analysis

- Sections 5, 6, 19, and 28
  Consistency in inclusions/exclusions from employment
- Sections 7, 9, 21, and 26
  Single appeals process
- Section 8
  DOR authority to request court ordered penalties

Section by Section Analysis

- Sections 10, 18, 27, and 29
  Harmonize definitions for wages, employer, and domestic service

Section by Section Analysis

- Sections 10, 18, 27, and 29
  Harmonize definitions for wages, employer, and domestic service
- Section 11
  One account number

Section by Section Analysis

- Sections 10, 18, 27, and 29
  Harmonize definitions for wages, employer, and domestic service
- Section 11
  One account number
- Section 12
  Harmonize individual liability provisions

Section by Section Analysis

- Sections 13, 30, 31, and 32
  Harmonize filing and remittance schedules

Section by Section Analysis

- Sections 13, 30, 31, and 32
  Harmonize filing and remittance schedules
- Sections 14, 15, 16, and 23
  Harmonize penalty, interest, and
  collection procedures

Section by Section Analysis

- Sections 13, 30, 31, and 32
  Harmonize filing and remittance schedules
- Sections 14, 15, 16, and 23
  Harmonize penalty, interest, and collection procedures
- Sections 17 & 25
  Updates references to specific subsections

Section by Section Analysis

- Sections 13, 30, 31, and 32
  Harmonize filing and remittance schedules
- Sections 14, 15, 16, and 23
  Harmonize penalty, interest, and collection procedures
- Sections 17 & 25
  Updates references to specific subsections
- Section 20
  Delegation of UI tax activities to DOR

Funding Components

- Current Level Transfer
  (Federal & State Special Revenue)

Current Level Transfer

- 43 FTE transferred to DOR
- Current level funding for:
  - personal services
  - operating expenses
  - equipment

Funding Components

- Current Level Transfer
  (Federal & State Special Revenue)

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- 43 FTE transferred to DOR
- Current level funding for:
  - personal services
  - operating expenses
  - equipment

Funding Components

- Current Level Transfer
- One-Time Only
  (50% General Fund/50% Federal & State Special Revenue Funds)

One-Time Only & Increased Ongoing Costs

- One-Time Only ($960K)
  - moving
  - contract audit
  - business process reengineering
  - equipment
- Increased Ongoing Costs ($372K)
  - ISD Computer Processing Costs

Funding Components

- Current Level Transfer
- One-Time Only
- Tax System Integration
  (50% General Fund/50% Federal & State Special Revenue Funds)

HB 561

CONSOLIDATION OF UNEMPLOYMENT INSURANCE TAX, WITHHOLDING TAX & OFLT

Section by Section Analysis

§ 1	Harmonizes confidentiality statutes by including UI specific requirements in Title 15.
§ 2	Establishes a payment distribution methodology for taxes, penalties, and interest for the combined entity.
§§ 3, 4, 22, and 24	Harmonizes statutes of limitations regarding assessments, refunds, or credits.
§§ 5, 6, 19, and 28	Provides for greater consistency in inclusions/exclusions from employment and a more uniform statutory format.
§§ 7, 9, 21, and 26	Establishes a single appeals process for most tax related issues to be within the purview of DOR and STAB.
§ 8	Provides DOR authority to request court ordered penalties for an employer's failure to file a report.
§§ 10, 18, 27, and 29	Harmonizes definitions for wages, employer, and domestic services.
§ 11	Clarifies that only one account number will be assigned for each employer.
§ 12	Harmonizes individual liability provisions for corporations, limited liability partnerships, and limited liability companies for failure to file required reports and for the payment of tax, penalty, and interest.
§§ 13, 30, 31, and 32	Harmonizes filing and remittance schedules.
§§ 14, 15, 16, and 23	Harmonizes penalty, interest, and collection procedures.
§ 17 and 25	Updates references to specific subsections to reflect harmonization and changes in statute format. Removes unnecessary reference to exclusions from definition of employment in UI law.
§ 20	Provides for the delegation of UI tax activities to DOR.

Quick Reference Guide

EXHIBIT 2
DATE 2/19/97
HB 561

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Confidentiality - Limitations for sharing information.	1	New Section: Allows DOR to share UI specific information and information common to both UI and DOR with public employees in the performance of their duties.	DOR's current confidentiality provisions are much more restrictive than UI's. The new language will allow the DOR to share employer information currently being shared by UI. There will be no change to the confidentiality provisions for individual income tax or any other tax administered by DOR. UI is required by federal law to share information with certain agencies.	+ Allows DOR to share information directly, rather than handing it off to UID for subsequent distribution.. + Sharing resources for the public good - reduces redundancy in agencies collecting information. + Could be perceived as government sharing tax information too freely.
Payment Distribution Methodology. Establishes a mechanism for distributing taxes penalty and interest collected.	2	New Section: Provides an equitable methodology for distributing payments for UI, W/H, OFLT, and penalty & interest, in cases where the employer fails to make payment in full or to timely file a report	Tax, penalty and interest collected will be applied to the employer's account on the basis of tax paid to total tax due, and distributed to the fund accounts accordingly. If an employer is unable to make full payment, the employer may request the payment be applied to a specific tax. Rules need to be adopted to fully implement this section. Prorating is more equitable than a priority distribution mechanism. If a priority scheme were proposed, taxes with a lower priority may be written off.	+ Cost effective as system versus a person makes payment distribution decisions. + Simple to explain and transparent to the customer. + Allowing employer to direct payment application would allow the employer to apply monies to UI and receive full state credit on FUTA 940 form. + Could leave some small tax debts outstanding so some may think it would be beneficial to pay off small tax debts first.

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Statute of Limitations on Assessments.	3	New Section: Establishes a statute of limitations for assessing DOR state income tax withholding and old fund liability taxes.	The new language in DOR limits the time to one year for revising a return and assessing tax due in the case of an employer who files a return at the end of the five year period. (UI did not adopt that language as they don't go beyond five years to amend reports or audit accounts.) Puts into place the authority for UI to enter into payment agreements with the employer for underpaid taxes. This has been done in practice, but no legal authority existed under current law.	+ More consistent language and easier for an employer to understand. + Requires DOR to assess tax within one year on an amended report that goes back five years or more.
	24	Amends 39-51-1303 to conform with the statute of limitations provisions in new section for DOR. For UI, provides clarification to the five year period to collect assessments. Also provides UI the authority to enter into payment arrangements with an employer.		
Statute of Limitations on Credits and Refunds.	4	New Section: For DOR, provides a five year statute of limitations for claiming a refund or credit, and extends the period for claiming a refund on certain overpaid taxes by one year (i.e. for a tax period beyond five years but paid within past year).	For DOR, the new language extends the period for claiming a credit or refund by one year if an amended return is filed and paid for a period five years back and later that year, discovered the employer actually overpaid when they amended their return. This can also happen, for example, in the case of an employer who is audited five years back, who appeals the audit determination but decides to pay the assessment to avoid accumulating penalty and interest charges, and later that year, the decision is reversed in favor of the taxpayer. Will enable UI to refund or credit employers with overpaid taxes up to prior 5 years, rather than only 3 years.	+ Currently, there is no statutory provision to credit the employer with an overpayment that came as a result of an appeal decision, however, this law would take care of most, if not all, of those situations. + Consistency and fairness in statute of limitations for refunding/crediting employers to be the same as for assessing taxes due.
	22	Conforms 39-51-1110(1), refunds to employers, to DOR proposed statute on credits and refunds. For UI, extends the period for claiming refunds from 3 years to 5 years.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Definitions of Employment and Exclusions from Employment. Creates more consistency in the inclusions and exclusions from employment and provides a more uniform format for UI, W/H and OFLT.	5	New Section: Provides a definition of employment and exclusions from employment for DOR income tax withholding, to more closely align with common provisions in UI and OFLT. (Some were previously excluded under "wages".)	The intent for these legislative changes is to: 1) create more common definitions of employment and exclusions from employment; and 2) to make the laws more uniform in sequence and format. Those definitions that are in common appear at the beginning, and most exceptions fall to the end. For UI purposes, no substantive changes were made in the interpretation of what is included or excluded from the definition of employment. Many of the "new" exemptions found in the income tax and OFLT withholding sections of the law are for individuals who consider themselves "self employed" and do not impact revenues. Information on church related legislative proposals were shared with churches (Montana Association of Churches distributed to their membership). Some churches commented that they thought it made sense to cover the church employees with UI. Churches can elect to cover their clergy with workers' compensation if they wanted that protection.	+ Ease to employers by having a consistent format for each law, as well as having more common definitions of employment and exclusions from employment. + Make it easier for employers to report and voluntarily comply with all laws affected. + Some sales businesses may want a broader definition of direct seller. + May result in additional UI tax to insurance and securities businesses.
	6	New Section: Provides a definition of employment and exclusions from employment for DOR OFLT, to more closely align with common provisions in UI and WH.		
	19	Amends 39-51-204, by rearranging exclusions from employment that are in common with WH and OFLT to appear at the beginning, and places those that are unique to UI at the end of that section. Amends family employee exemption to be more uniform with WC. Clarifies direct sellers exemption. Removes exemption for non-clergy church employees and patient of a hospital.		
	28	Amends 39-71-401, employments covered and employments exempted, by changing language on direct sellers and creating an exclusion for ministers to be in common with W/H, OFLT and UI.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
<u>UI Appeal Procedures Transferred to DOR.</u> Establishes single appeal process in DOR for most UI and DOR employer tax related issues.	7	New Section: Establishes a new appeal procedure in DOR to provide a faster process on tax related cases that involve a UI claimant. Outlines the appeals procedure adopting the UI time lines for appealing a decision.	Establishes a new DOR tax review procedure on cases that involve UI benefit claimants who assert that their employer incompletely or inaccurately reported their wages. Also amends law on state tax appeal board to resolve these UI benefit claimant related cases at a more accelerated pace. Amends UI to provide a dispute resolution process on UI tax related cases through DOR. Employer-employee (independent contractor issues) determinations for UI and DOR will continue to be issued by DLI (ERD) and follow the DLI appeal procedures.	+ Eliminates a potential dual appeal process by having all UI Tax and DOR employer tax related issues processed in DOR. + Provides one decision that is binding for DOR W/H, OFLT and UI. + New Section provides a timely appeal procedure for a UI claimant and affords due process to all parties. + Longer time period for an employer to file an appeal (if there is no claimant involved).
	9	Amends 15-2-302, direct appeal from department decision to state tax appeal board, to provide a specific state tax appeal board procedure on tax related issues that involve a UI claimant.		
	21	Amends 39-51-1109, tax appeals -- procedures for UI, to provide that all UI tax related appeals, except for those that involve an employer-employee relationship and benefit charges to an employer account, will be issued by DOR as provided in Title 15, chapter 30, part 2.		
	26	39-51-2402(1), initial determination--redetermination, is amended to provide that determinations involving subject wages for a claimant will follow a new appeal procedure in DOR as outlined in Section 7.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
DOR Provision to Enforce Employer's Failure to Report.	8	15-1-302(2) is amended to provide legal authority to request the court to order an employer to pay penalties for failure to report.	A penalty is being proposed (Section 16) for non-filing of reports. DOR needs to amend current law to request the court to order the employer to pay this penalty, should the employer fail to submit the report as due. DOR needs to provide for the importance of the report for UI purposes and amend statutes accordingly. This aligns DOR with existing UI law.	+ Provides clear authority for requesting the court to issue an order for paying penalties as a result of employer not following reporting requirements. + Provides incentive in the law to comply with filing requirements.
Harmonize Definitions of Wages, Employer, and Domestic Services	10	Amends 15-30-201 definitions for income tax withholding on "wages", "employer", and "domestic service" to be in harmony with UI, OFLT and WC.	Amends laws to provide for certain common definitions, based on input from an advisory committee and employers who attended open invitation meetings in cities throughout Montana. Though not identical in content, a more common definition and format of wages and exclusions from wages will be particularly helpful to employers. W/H adopted UI definition of "employer" and included "employing unit" which, again, will help employers to understand what taxes they are liable for. In addition, UI, W/H and OFLT had no statutory definition for domestic service, thus adopted WC definition, which is consistent in interpretation.	+ Reduces some of the complexity for employers by providing uniform definitions where possible. + Eliminates sporadic domestic employers from requirement to pay OFLT and of doing reports for diminimus amounts of tax. Eliminates need for agency enforcement in this area which wasn't cost effective to pursue. + Definitions still not in complete harmony so employers still need to know and understand what amounts are subject to each tax type.
	18	Amends 39-51-204 "wages" and "domestic service" definitions for UI to be consistent with W/H, OFLT and WC.		
	27	Amends 39-71-204 wages defined, for WC purposes to more closely align with UI, W/H and OFLT.		
	29	Amends 39-71-2501 definitions for "domestic service", "employer", "employee", and "wages", to more closely align with UI, W/H, and WC.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Single Employer Account Number Issued.	11	Clarifies 15-30-202, that DOR assigns only one account number for each employer.	DOR currently has a practice of assigning only one account number for each employer entity, but there have been cases where more than one number was requested and has been assigned. This language is similar to what is in UI, to allow one account number per employer. Upon full integration of data bases, it is necessary to have only one active account number per employer entity.	+ Eliminates any confusion on how many account numbers can be assigned to a single entity. + Facilitates consistency between UI and DOR. + A few employers may prefer to report separately for each business location.
Employer Liability for DOR W/H Taxes and Report Filings.	12	Amends 15-30-203 to adopt language in UI law and DOR administrative rules related to employer liability for corporations, limited liability partnerships and limited liability companies, for the filing of required reports and payment of unpaid taxes, penalties and interest.	Expands the current DOR provision on corporate officer liability and addresses limited liability companies and limited liability partnerships. UI has a similar law in place, thus, this amendment will make laws more uniform.	+ By inserting in law, may be able to eliminate some administrative rules. + Having provision in law is more explicit, easier for employer to locate and understand. + Eliminates confusion to employer on who can be held liable for W/H assessments and non-filed reports.

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Report Filing and Remittance Schedules.	13	Amends 15-30-204, reporting and remittance requirements, to provide for remittance schedules based on the size of payroll and quarterly report filing for all employers, except those who are not subject to UI requirements. Adopts UI language on record keeping requirements.	Clarifies and amends DOR state income tax withholding and old fund liability tax statutes in regard to reporting and remittance schedules. With the anticipation of having a combined reporting function with UI, provides for a quarterly reporting requirement for most employers. There is also an annual reporting option for those employers who are not subject to UI. Quarterly wage reporting is needed to timely process UI benefit claims and is a requirement by USDOL. Section 13 provides for alternative reporting and remittance methods. Different effective dates are needed due to the implementation of a new integrated computer system and new processes that will commence on 1/1/99. DOR adopts UI law in regard to record keeping and providing records during the course of an audit or examination. This aligns with current DOR statutes found in the individual income tax sections.	+ Establishes uniform quarterly reporting schedule. + May ease financial woes for some employers who previously filed and paid annually but who now must file and pay quarterly + Allows employers alternatives to standard reporting methods, thus making it easier for those employers who have electronic capabilities. + More closely follows federal remittance schedule. + Options allowed may create confusion for some employers. + Reporting and remittance schedules were changed in last session and this may create more confusion rather than help.
	30 & 31	Amends 39-71-2503, Workers' compensation old fund liability tax to correspond with the filing and remittance requirements. Section 30 is effective 1/1/98 and Section 31 is effective 1/1/99. Also makes reference to employers who are required to withhold and remit OFLT, and when they become liable.		
	32	Amends 39-71-2505, Workers' compensation old fund liability tax to correspond with the filing and remittance requirements.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Penalty, Interest and Collection Procedures.	14	Revises 15-30-207 by moving subsection (3) in regard to penalties, into a section for penalties, interest, and collection procedures, thus having all pertinent provisions in one location.	The purpose behind this proposal is to provide for a common rate of penalty and interest as well as common collection remedies for both DOR and UI. We recommend a 1/1/99 effective date as this provision requires a new integrated computer system to implement, and the expected date for a new system to be operational is 1/1/99. The outcome will be that an employer will receive one statement for UI and DOR employer taxes and will work through one agency to make payment or payment arrangements. UI interest rate is currently 18% per annum. Amendment aligns the interest rates. Interest rate increases from 9 or 12% to 18% for DOR and the $50 penalty for late filing is completely new for UI. These concepts were presented to employers at area meetings throughout Montana and was fully supported.	+ Encourages voluntary reporting yet allows agency to be compensated for costs of collection activity. + First time waiver eliminates the need for employer to request waiver and eliminates the unnecessary paperwork and the manual waiver process. + Fair penalty - "Time fits the Crime" by assessing penalty based on lateness of filing. + Penalty and interest charges are cost beneficial to pursue. Employer may be more apt to pay state than other debts that currently have higher interest rates. + Easy to compute, simple to explain.
	15	Revises 15-30-208 by moving subsections (2),(3) and (4) in regard to "warrants to collect" into a single section for penalties, interest, and collection procedures, thus having all pertinent provisions in one location.		
	16	Revises 15-30-209, violations by employer -- penalties and remedies, to include the rate of interest on overdue taxes. Amendment provides a waiver for first time late filing or remitting, a $50 penalty for subsequent late filing, a $50 penalty for issuing a subpoena to secure a non-filed report or non-paid assessment, and $100 penalty for non-compliance with a subpoena. Assesses interest at the rate of 18% annually and penalty at 2% per month up to a maximum of 24% on unpaid taxes.		
	23	Amends 39-51-1301, penalty and interest on past due taxes, to include waiver of penalty on first time late report or remittance, a $50 penalty on past due reports, a $50 subpoena penalty (increased from $40 currently), and a $100 penalty for non-compliance with a subpoena.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Update references to specific subsections that change as a result of this proposal.	17	Amend 37-31-101(2) to correct references to subsections of 39-51-204 of UI law that deal with cosmetologist booth rental arrangements.	Revisions are needed to make references in affected laws in harmony with the legislative proposals. Removes unnecessary reference to exclusions from definition of employment in UI Law.	+ Correct subsections would be cited.
	25	Amend 39-51-2108(1) to delete reference to 39-51-204 on exempt employment.		
Delegation of UI Tax Activities to DOR.	20	39-51-301 is amended to provide for the delegation of certain UI Tax related functions to the DOR. Provides employee protection rights and provides for UI employees who are transferred to DOR to be considered internal applicants for one year. Provides for equipment transfer and effective dates for transfer of duties for determining legal authority.	This provision is necessary to enable delegating the various UI tax related duties to DOR on a contracted services basis. The language clarifies that this is not a reorganization of state agencies, but rather a contract of services between two departments. To reduce employee concerns, protection is provided to employees involved in the transfer from UI to DOR in regard to seniority, pay, grade, etc. This section provides for the transfer of equipment, leases and contracts that UI has in place to the DOR. Additionally, this section addresses the date legal responsibility for the transfer of UI tax activities to DOR takes place.	+ Reduces anxiety of change for personnel who will transfer. + Provides fairness to employees who are transferring. + UI maintains oversight responsibility over the UI tax related functions contracted to DOR to provide accountability to US Department of Labor of quality standards necessary to maintain federal funding and offset credit to employers.

W/H = Income Tax Withholding
UI = Unemployment Insurance
WC = Workers' Compensation
OFLT = Old Fund Liability Tax
S = Subject, E = Exempt

Proposals to Harmonize

MONTANA STATE TAX CHART

	- - Current Law - -				*- - Proposed Law - -*					
Special Classes of Employment and Types of Payment	**W/H**	**UI**	**WC**	**OFLT**	**W/H**	**UI**	**WC**	**OFLT**	**Recommendation**	**Rationale**
(1) **Casual Labor** not in the course of the employer's trade or business	E	E	E	E	E	E	E	E	Adopt UI language for W/H and OFLT.	Consistent language and interpretation will result in better understanding by employers.
(2) **Cosmetologists or Barbers**, who are free from control, work under a written contract and meet other requirements in UI and WC law	S [1]	E	E	S [1]	E	E	E	E	Exempt qualified cosmetologists and barbers from OFLT and W/H.	Cosmetologists and barbers successfully sought legislation in the past for these exemptions to UI and WC. Most of these individuals file as self employed, thus, little if any, revenue loss to OFLT.
(3) **Domestic or Household Service** in a private home, local college club or local chapter of a college fraternity or sorority	E	E [2]	E	S	E	E	E	E	Adopt UI coverage threshold of $1,000 in cash paid per quarter for W/H and OFLT. Leave exempt from WC due to equal protection laws.	Eliminates problems associated with enforcing compliance on sporadic domestic employment. Insignificant OFLT revenue loss; unlikely most domestic employers are complying now. Provides UI benefits to household employees who are currently covered. Consistent with FUTA requirements. More consistent with the "Nanny Tax" concept.

[1] Unless person qualfies as an independent contractor

[2] If total wages are under $1000 in cash in any calendar quarter

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(4) **Family Employees** (spouse, child or parent of sole proprietor)	S	E [3]	E	S	E	E	E	E	Modify UI to exempt sole proprietor's dependents for whom an employer may claim an exemption under I.R.C. Adopt similar exemption for W/H and OFLT. Clarify language to state that the spouse of a sole proprietor is exempt, and allow for voluntary individual income tax withholding.	Many employers prefer not to pay UI on dependents whether under 21 or not. Dependents are not as likely to depend on UI benefits if employment is terminated. Makes law clear that spouse's wages are not subject regardless if spouse is a business partner or an employee. Reduces litigation in this area. Unlikely there is an income tax liability for dependent children; however, if there is, it would be paid at the time the individual return is filed.
(5) **Flooring Installers** who are free from control and direction, work under a written contract and meet other specified requirements	S [4]	E	E	S [4]	E	E	E	E	Make a specific exemption for qualified flooring installers from OFLT and W/H.	The floor covering industry successfully sought legislation in the past for these exemptions to UI and WC. Most of these individuals file as self employed, thus, there would be little, if any, revenue loss to OFLT.

[3] UI definition exempts employment of sole proprietor's spouse, parent, or children under age 21

[4] Unless person qualifies as an independent contractor

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(6) **Petroleum Land Professionals** who are free from control and direction, work under a written contract and meet other requirements	S[5]	E	E	S[5]	E	E	E	E	Make a specific exemption for qualified petroleum land professionals from OFLT and W/H.	The land petroleum industry successfully sought legislation in the past for these exemptions to UI and WC. Most of these individuals file as self employed, thus, there would be little, if any, revenue loss to OFLT.
(7 a) **Ministers** of churches and members of a religious order performing duties as such	E	E	S	S	E	E	E	E	Exempt ministers from WC and OFLT, with the ability to elect WC coverage.	In many cases, ministers are considered self employed, thus, little impact to OFLT revenues. Ministers can elect WC coverage if it is desired. Proposal maintains consistency with FUTA.
b) **Other Church Employees**	S	E	S	S	S	S	S	S	Make church employees (non-clergy) subject to UI.	Many churches currently elect to have UI coverage on their employees. UI tax rates are relatively low and church can elect to reimburse the fund rather than pay tax on wages. UI benefits would be available to church employees in the event of layoff. Churches responded favorably to this proposal.

[5]Unless person qualifies as an independent contractor

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(8) **Newspaper Carrier** delivering or distributing newspapers to a point for subsequent delivery or distribution	E	E	E	S	E	E	E	E	Exempt newspaper carrier from OFLT.	OFLT is the only tax (of these four taxes) not in harmony. Newspaper industry successfully sought legislation to exempt these individuals from UI and WC. Anticipate little, if any, revenue loss as many of these individuals are issued 1099's and filing as self employed.
(9) **Newspaper Freelance Correspondents**, provided the person is compensated solely by the story or picture	S [6]	E	E	S [6]	E	E	E	E	Make specific exemption for newspaper free lance correspondents from OFLT and W/H.	Newspaper industry successfully sought to exempt these individuals from UI and WC in prior legislative session. Anticipate little, if any, revenue loss as many of these individuals are issued 1099's and filing as self employed.

[6] Unless person qualifies as an independent contractor

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(10) **Salespersons** a) **Direct sellers** engaged in the sale of consumer products in the customer's home	S [7]	E	E	S [7]	E	E	E	E	Modify language in UI and WC to eliminate reference to I.R.C. and expand on definition. Exempt direct sellers from W/H and OFLT using same language as proposed for UI and WC.	Industry succeeded in exempting direct sellers, to include "Kirby vacuum cleaners, Avon and Tupperware products," from UI and WC in past legislative session. Make law clear with intent and how to interpret, rather than defer to federal statute and court cases. Anticipate little, if any, revenue loss as many of these individuals are issued 1099's and considered self employed.
b) **Real Estate** brokers or salespersons	S [7]	E [8]	E	S [7]	E	E	E	E	Exempt licensed real estate brokers or salespersons from W/H, UI, and OFLT (add "licensed" to law). Delete UI language of "paid solely by commission".	Method of payment did not seem to be the overriding factor for exempting this type of employment. Real estate brokers are to be "licensed" by law, thus, suggest it should be reflected in this statute as well.

[7] Unless person qualifies as an independent contractor

[8] If paid solely by commission

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
c) **Insurance** salespersons	S [9]	E [10]	S	S [9]	S	S	S	S	Make insurance salesperson subject to UI (unless person qualifies as an independent contractor).	Only UI has exemption for insurance salespersons, thus change UI law to be consistent with other tax types.
d) **Securities** salespersons	S [9]	E [10]	S	S [9]	S	S	S	S	Make subject to UI (if person doesn't qualify as an independent contractor).	Of these laws, UI is only one that has an exemption for securities salespersons, thus recommend changing UI to be consistent with other tax laws. Montana UI is one of a few states nationally that has a specific exemption for security salespersons. Change recommended is consistent with FUTA.

[9] Unless person qualifies as an independent contractor

[10] If paid solely by commission

Legislative Recommendations, Administrative Subcommittee

Our recommendations are based upon the charge to simplify and streamline operations for both our customers and government.

Topic	Current Methodology	Recommendation	Rationale
① Filing and Remittance Due Dates:	**UI-** Quarterly reports and remittance. **DOR-** Depends on calendar liability: "Accelerated" Schedule: Remit and file according to Federal Schedule (>$12,000) "Monthly" Schedule: Remit monthly, file annually ($1,200 - <$12,000) "Annual: Remit and file annually (<$1,200)	**"Accelerated" Schedule ()$12,000 state withholding tax)** Remittance: **Taxes withheld due according to the federal remittance schedule** **UI and Employer OFLT due Quarterly** Report: Due quarterly **"Monthly" Schedule: ($1,200 - ($12,000 state withholding tax)** Remittance: **Taxes withheld due according to federal monthly due date.** **UI and Employer OFLT due Quarterly** Report: Due quarterly **Quarterly Schedule: (($1,200 state withholding tax)** Remittance and Report: All taxes and reports due quarterly unless Employer is not subject to UI and elects to remit and report annually.	Fairness issue among tax programs: For large and medium employers, consistent with Federal remittance and reporting requirements. State cash flow is not materially impacted. Small employers will have minimum reporting but no more than currently for UI -Less chance of diversion of withholding. For all employers, wage credits are available as before. No change for UI; any other alternative may require some employers to file more often than quarterly. The above aligns employers with the federal remittance and/or filing requirements.
② Application of Payments	**UI-** UI Employer Contribution Tax first, then to Administrative Fund Tax. Payments applied to oldest quarter first, unless remitter instructs otherwise or paid with a current report. **DOR-** "Trust based taxes" (Employee Withholding/OFLT) paid first. Applied to oldest quarter first unless remitter instructs otherwise or paid with a current report.	**Prorated on the basis of tax due, (including penalties and interest)** This recommendation assumes one assessment for merged taxes, with one penalty , etc.	If a priority scheme were proposed, taxes with a lower priority may be written off. Cost effective: The system can make the allocations, verses a person. Simple to explain - Transparent to customer.
③ Penalty and Interest		**First Time Late** The first time an employer is late a notice will be issued rather than a bill. The notice will include an explanation of the problem and the consequences of further noncompliance.	Fairness issues- The agency has the authority to waive first time delinquencies. Any additional delinquencies are handled on a case-by-case basis. Why create a receivable that will be waived. It's not cost beneficial.

Topic	Current Methodology	Recommendation	Rationale
④ *Late Payment Penalty:*	UI- 10% of tax due with a $10.00 minimum An additional 5% with a $15.00 minimum after 30 days. DOR- 10% of tax due with a $5.00 minimum OR- In the case of "Habitually Delinquent accounts- 25% of tax with a $25.00 minimum.	2% of late paid tax, 2% per month or any portion of a month maximum 24%; *NOTE: Late pay charges may be suspended once an acceptable payment arrangement is made. If customer fails to comply with the terms, penalty is "turned on", and back penalty re-assessed.*	✣ "Time fits the crime" - Currently, customers who file 1 weeks late are penalized the same as those who file 2 years late. Encourages compliance, ensuring smaller payment for early compliance. Other states use the percentage per month schedule in lieu of a graduated penalty for its simplicity and it works well. Easy to compute, explain to employers, understand and compile. No minimum because : ✣ it may encourage a false ZERO filing to avoid penalty ✣ minimums are confusing.
⑤ Late File Penalty	UI- none DOR- $5.00 minimum or 5%	No tax due, no solicitation: no penalty Late File with solicitation: $50 Penalty	Encourage voluntary compliance, cost beneficial to all. ($5.00 penalty does not achieve compliance, as intended, but is perceived as a nuisance.) -Intent is to reimburse the state for the cost of solicitation and research. -Cost beneficial to pursue. -Encourages future voluntary compliance -Fair to those who voluntarily comply.
⑥ Subpoena:	UI- $40.00 DOR- none	Subpoena Penalty: *$50* (in addition to the $50 assessed for Late File) Non-response to Subpoena: *$100* (In addition to other penalties assessed)	A $40 subpoena penalty is currently collected by UI, and $50 is consistent with Late File Penalty. UI Penalty works well. UI Subpoena does not require legal support but is an administrative procedure.

Topic	Current Methodology	Recommendation	Rationale
⑦ Interest:	UI- 18% Annual (1.5% per month) DOR- 9% Annual (.75% per month)	**1.5% Interest per month or any portion of a month; 18% annual**	Standardize interest rates between UI and DOR. UI experience has been positive; it works well. Avoids making the State an attractivealternatefinancial institution - encourages compliance. Penalty and interest should be uniform throughout (DOR & UI). The interest is intended to reimburse the state for lost revenue and other costs; the 18% is a fair rate in line with what lending institutions charge but not so low as to avoid compliance.

Eric Ellman, Direct Selling Association
Erin Rowe-Graves, Amway Corp.
Brad Griffin, Montana Retail Association

Opponents: None

Opening Statement by Sponsor: **EXHIBITS 1 & 2**
{Tape: 1; Side: A; Approx. Time Count: .5; Comments: None.}

REP. BETTY LOU KASTEN, HD 99, BROCKWAY, introduces the bill's short title as the UI/DOR Consolidation, indicating the legislation is to harmonize the definition of wages and employment. It will restructure the process by which employers taxes are reported. Penalties and rate of interest for past due state income tax withholding and employment insurances are revised and simplified. The fiscal note is no longer accurate as to where the money comes from; see Exhibit 1 for the funding that was put into HB 2 on Monday; and Exhibit 2, a letter from Paychex, which will indicate their support of this effort.

Proponents' Testimony:
{Tape: 1; Side: A; Approx. Time Count: 3.2; Comments: Summary Follows.}

Mary Bryson, Director, Department of Revenue supports this legislation as it fits with her vision for the Department of Revenue. Montana is the first state to move boldly in this area.

Pat Haffey, Department of Labor and Industry indicates surveys have been studied since 1993. This design consolidates the process and makes paperwork easier. It is, as well, an opportunity to serve taxpayers better.

Jeff Miller, Department of Revenue **EXHIBIT 3**
Mr. Miller utilizes a slide presentation to enhance his testimony. Hard copies of the slides are attached as Exhibit 3.

Dennis Zeiler, Department of Labor & Industry, Unemployment Insurance Division **EXHIBIT 4**
Mr. Zeiler provides a step-by-step analysis of the consolidation process as it relates to HB 561. Highlights are: 1) Harmonizes definition; 2) Uniform statutes; 3) Harmonizes administrative functions; 4) Delegates the Unemployment Insurance function to the Department of Revenue; 5) Funding transfer to the Department of Revenue.

Tom Harrison, Montana CPA's supports the proposal and credits the management of the Department of Labor and Industry and the Department of Revenue for getting the proposal together.

David Owen, Montana Chamber of Commerce supports the bill particularly in light of the simplification of paperwork that will result if the legislation is passed.

Riley Johnson, National Federation of Independent Business (NFIB) supports the bill but encourages the door be kept open as he believes other things could be included such as W-4 Forms.

Bob Gilbert, Job Servers Employment Council urges support of the bill.

Nancy Butler, State Funds supports the bill primarily for the consistence it would provide.

Maxine Morehouse, Bookkeeper, Capital Sports and Western appreciates being part of the process at its inception rather than after the fact.

Eric Ellman, Direct Trade Association **EXHIBIT 5**
Mr. Ellman offers proposed amendments to the bill as outlined in Exhibit 5. Mr. Ellman would like the language to return the process to current statutes as they relate to the exemption for Direct Sellers who conduct business in their own homes.

Erin Rowe-Graves, Amway Corporation supports Mr. Ellman's testimony.

Brad Griffin, Montana Retail Association also supports Mr. Ellman's amendments seeking status quo as defined by the US Code.

Opponents' Testimony:
{Tape: 1; Side: A; Approx. Time Count: 40.3; Comments: No opponents testify.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 40.4; Comments: Questions from the committee continue on Tape 1, Side B in its entirety.}

SEN. MIKE SPRAGUE asks Mr. Zeiler if standardizing the codes would be a detriment to the bill. **Mr. Zeiler** indicates the intent is to codify the administrative rules and would not be a detriment to the bill. **SENATOR SPRAGUE** continues to seek clarification. **Mr. Zeiler** defers to **Ms. Sandy Bay, Bureau Chief** who indicates the administrative rules were put in place sometime in 1995. Further she said the rulemaking was done based on the testimony received on HB 98 in the 1995 legislative session; there was no intent to change the meaning behind the legislation. **SENATOR SPRAGUE** refers to the "Kirby" Legislation, asking why the intent was changed. **Ms. Bay** does not believe the intent was changed.

{Tape: 1; Side: B; Approx. Time Count: 0; Comments: Tape turned.}

SEN. FRED VAN VALKENBURG requests **Mr. Miller** provide the number of employers affected. **Mr. Miller** says between 34,000 and 37,000 are registered with the Department of Labor with Old Fund licensed employers being in the majority; under that group is the Unemployment Insurance register numbering somewhere in the 23,000

to 24,000. Income tax employers range is about the same; virtually all employers will be positively impacted. **SEN. VAN VALKENBURG** asks **Mr. Miller** to summarize the concerns and comments received from affected parties. **Mr. Miller** indicates the primary concern was that we are "continuing to change" the system. **SEN. VAN VALKENBURG** inquires if the Department of Revenue will have an employer sensitive response to implementation of these changes. **Mr. Miller** responds affirmatively regarding an empathetic and sympathetic, user-friendly approach. He says employers have been involved from the beginning of the process and will continue to be involved throughout the implementation.

REP. KASTEN offers input regarding the two increases in penalty and indicates the time sequence will penalize at 2% at first, not at 18% as is the current practice.

SEN. VAN VALKENBURG asks **Ms. Bryson** if the Department of Revenue would object to the inclusion of the proposed Ellman amendment. **Ms. Bryson** says they do object; they are codifying existing law. **SEN. VAN VALKENBURG** indicates the rule really doesn't reflect legislative intent; the Amway people have indicated they are engaged in providing services in addition to tangible products which appears to be in conflict with the rule. He asks if the Department objects to the committee amending the bill so that it reflects legislative intent. **Ms. Bryson** replies that whatever the committee chooses to do the Department will support those decisions.

CHAIRMAN DEVLIN asks **Ms. Bay** how in the interim the administrative rule was passed in conflict with legislative intent. **Ms. Bay** responds the intent was based on the HB 98 testimony received in the 1995 session. **CHAIRMAN DEVLIN** asks **Ms. Bay** how they advertise for rule changes; who was let know and who objected. **Ms. Bay** indicates there were no objections and that she doesn't know how the advertising was done. **CHAIRMAN DEVLIN** requests the records for the Committee's review.

SEN. MIKE FOSTER asks **Mr. Miller** if the rulemaking process addressed selling in seller's home; is there a statutory appropriation in this bill. **Mr. Miller** responds there is no statutory appropriation. **SEN. FOSTER** questions **Mr. Miller** referencing page 59 regarding staggered effective dates. **Mr. Miller** indicates the reporting due dates will not change until the system is implemented to support the changes. However, definition changes will be made sooner in order to support the law.

SEN. WILLIAM GLASER indicates one of the most difficult things this Committee ever did was the Old Fund Liability Tax. By changing the definitions people have been put in and people have been taken out. He questions how we rationalize to the people who are now in, such as insurance and security sales people. The response comes from **Mr. Miller**, who indicates it was a difficult decision but he sees no appreciable revenue change. **SEN. GLASER**

comments that if there was any fairness to that tax it was that absolutely nobody escaped, not even the Governor. **Mr. Miller** agrees that was a very broad-based tax and the changes were made for consistency, the old process was not cost effective and the definitions are changed for harmony. **SEN. GLASER** then questions **Mr. Zeiler** regarding Unemployment Insurance Exemptions. **Mr. Zeiler** responds stating we are adding three exclusions for security and insurance salesmen, for work performed at a hospital by a patient at a hospital and for employment at a church. It's a small number of people affected and they project a very small impact in revenue to the fund.

CHAIRMAN DEVLIN asks if **Mr. Miller** went around the state; what were the remarks he heard regarding the exemptions. **Mr. Miller** indicates he had visited nine locations and deferred to **Ms. Maharg, Department of Revenue** for further clarification. **Ms. Maharg** indicates cosmetologists and barbers are in support of the bill and that the majority of employers apparently consider themselves independent already and were paying through self-employment tax.

SEN. DOROTHY ECK asks **Mr. Miller** if filing and remittance procedures are aligned with federal reporting. **Mr. Miller** responds the administrative changes are in line with federal requirements as much as possible. **SEN. ECK** asks if the federal people are interested in assisting Montana with implementation. **Mr. Miller** responds in the affirmative stating they are meeting with federal officials tomorrow.

SEN. BOB DEPRATU references page 38 of the bill, Section 24, line 25 "or employee." **Ms. Bryson** responds this is consistent with current law.

CHAIRMAN DEVLIN queries **Ms. Bryson** referencing language in another similar bill that was killed; why is this language reappearing in this bill. **Ms. Bryson** responds this is not a change for income tax purposes; this relationship has been in place for income tax purposes for several years; the change only affects unemployment insurance tax portions. The bill referenced was to change it for natural resource taxes.

SEN. BARRY STANG requests **Mr. Miller** provide information to the Committee regarding the Andersen Consulting meetings - how many people attended the meetings and what were their comments. Further he asks if he had a $1,000 liability and didn't pay it on time how he would be penalized up to six months under the old law and the new law. **Mr. Miller** responds under current law he would be assessed 10% with a minimum of $10.00. Under new law the penalty is a graduated penalty of 2% per month up to a maximum of 24%. It's time sensitive. **SEN. STANG** continues regarding other similar bills - why did we pick 2% on this one. **Mr. Miller** answers there was no opposition to 2% as being reasonable.

SEN. SPRAGUE asks **Mr. Miller** if the intent if the amendment is to increase revenue, and references timing issues. **Mr. Miller** indicates that is a separate agenda which needs to be discussed completely and apart from this issue. He indicates this process will be reviewed in one year. **SEN. SPRAGUE** then inquires of **Mr. Ellman** why direct selling industry objects to the changes. **Mr. Ellman** states the rule wasn't advertised which narrows the definition of direct seller. Further he believes there are substantive concerns relative to the US Codes.

Closing by Sponsor:
{Tape: 2; Side: A; Approx. Time Count: .1; Comments: None.}

REP. KASTEN closes indicating this is the first of three phases of reform. There is more work to be done. She points out this bill has been funded on a one-time-only basis, that it will, she believes, save money; and that she does not totally oppose the amendments but doesn't welcome amendments to the bill. If passed, **SEN. SUE BARTLETT** will carry the bill.

EXHIBITS 6 & 7

NOTE: Exhibits 6 (Mary Bryson's testimony) and 7 (Letters in opposition to HB 561) were presented to the secretary following the conclusion of the hearing.

HEARING ON HB 536

Sponsor: REP. JOHN BOHLINGER, HD 14, BILLINGS

Proponents:
Richard Crofts, Commissioner of Higher Education
Eric Hanson, representing Governor Racicot
Bob Brigham, ASUM
Jeremy Fritz, ASMSU
Jim Stipcich, Task Force on Financial Aid Reform
Arlene Hannawalt, MT Guaranteed Student Loan Program

Opponents: None

Opening Statement by Sponsor:
{Tape: 2; Side: A; Approx. Time Count: 3.9; Comments: None.}

REP. JOHN BOHLINGER, HD 14, BILLINGS, introduces the bill as having full support of the leadership of both the Republican and Democratic parties. It has been endorsed by Governor Racicot and the Commissioner of Higher Education. This bill is a response to the rapidly rising cost of higher education and provides a means by which the average Montanan can provide for his/her family member's education by using the tax incentives that are built into this bill. He provides a section-by-section explanation of what the bill does: Section 1: Identifies this program as the family education savings act.

Fact Sheet
UI / DOR Consolidation
February 19, 1997

Introduction

The Department of Revenue and the Department of Labor and Industry partnership project is another step forward in making government more efficient and user friendly. As the two agencies consolidate and streamline many of their employer-related functions, employers will experience a reduced compliance burden, resulting in savings of time and money. The two agencies will also save time and money as functions are integrated and redundancies are eliminated.

History

- ◆In August, 1993, Governor Racicot issued a request to the Department of Revenue and the Department of Labor and Industry to explore ways to enhance services provided to Montana employers and to consolidate functions where possible.
- ◆In response to the Governor's request, the Department of Revenue and the Department of Labor and Industry formed a Partnership Task Force to study the feasibility of integrating certain wage-based reporting functions.
- ◆The Partnership Task Force recommended integrating the following functions into a single agency: employer registration, wage reporting, enforcement, audit and appeals resolution. The Task Force recommended a phased approach.

Accomplishments to Date

- ◆In the first phase, which was completed this last summer, the agencies simplified employer registration; standardized tax collection laws and procedures; developed a joint audit process; and created a central unit for handling employer/employee dispute resolution.

Cost Savings

- ◆Andersen Consulting, in their cost/benefit analysis of the project, estimated that approximately 28,300 Montana employers would each save $400 - 1,000 per year through reduced compliance burden under the new initiative. The firm estimates total savings each year to Montana employers of nearly $13 million. That figure is based upon the full integration of employer registration; wage reporting and report processing; enforcement; audit and examination; and appeals and dispute resolution between the two agencies.
- ◆Andersen Consulting also predicted savings of more than a million dollars to the Department of Revenue and the Department of Labor and Industry over a five year period as employer-related processes are integrated and redundancies are eliminated.

Time Frame

- ◆January 1, 1998 is the proposed effective date for adoption of a uniform format for the definition of wages and subject employment (where possible), tax collection and administrative provisions. Employers will be able to contact one agency to handle Unemployment, Old Fund Liability and State Withholding taxes.
- ◆January 1, 1999, is the target date for the consolidation to be completed. As of that date, employers will be able to complete one report and write one check for Unemployment, Old Fund Liability and State Withholding taxes.

General Facts

- ◆28,300 employers pay Unemployment Taxes for annual collections totaling $58 million (based on calendar year 1995).
- ◆37,500 employers pay Old Fund Liability and State Withholding Taxes for annual collections totaling $270 million for State Withholding and $47 million for Old Fund Liability (based on calendar year 1995).

EXHIBIT 1
DATE 3/19/97
HB 561

Amendments to House Bill 2
Committee Study Bill - Purple copy
Requested by Betty Lou Kasten
For the Committee on Appropriations
Prepared by Bruce McGinnis
Tax Counsel, Department of Revenue
March 3, 1997

1. Page A-12, line 2
Insert: "b. DOLI/DOR Increased Processing Costs"

Page A-12, line 3,
Insert: "291,900 [General Fund] 194,600 [State Special Revenue] 486,500 [Federal Special Revenue] 107,700 [General Fund] 71,800 [State Special Revenue] 179,500 [Federal Special Revenue]"
Adjust totals
Reoutline: subsequent subsections

An amendment to HB-2 is needed for funding for the proposed consolidation of Unemployment Insurance Tax functions currently located in the DOLI with Withholding Tax and OFLT functions within the DOR. The costs associated with the consolidation are OTO and will be used for re-engineering business processes within the DOR, moving UI staff to and retrofitting space in the DOR, increased computer processing charges, contracted audit services, and equipment. HB-550 passed by the 54th Legislature provided funding for a cost/benefit analysis to assess the feasibility of integrating these taxes. Andersen Consulting, in their cost/benefit analysis of the project, estimated that approximately 28,300 Montana employers would each save $400 - $1,000 per year through reduced compliance burden after consolidation. The firm estimates total savings each year to Montana employers of nearly $13 million. That figure is based upon the full integration of employer registration, wage reporting and report processing, enforcement, audit and examination, and appeals and dispute resolution between the two agencies. Andersen Consulting also predicted savings of more than a $1 million dollars to the DOR and DLI over a five-year period as employer-related processes are integrated and redundancies are eliminated. Without funding for costs associated with the integration, savings for Montana employers and efficiencies in state government cannot be achieved.

G:\WP\HB0002.AMD

EXHIBIT 2
DATE 3/19/97
HB 561

PAYCHEX®
911 Panorama Trail South
P.O. Box 25397
Rochester, New York 14625-0397
(716) 385/6666

February 19, 1997

Mr. Chase Hibard
Chairman, House Taxation Committee
State of Montana

Dear Chairman Hibard:

I am writing this letter on behalf of Paychex, a national payroll and tax preparation company that provides services to over 250,000 clients throughout the country. Our clients are primarily small businesses, many of whom struggle with the complexity of tax law and regulations, including those relating to payroll and unemployment taxes.

We understand that there is an effort underway in your state to move towards a uniform definition of wages for income and unemployment taxes. As both an employer and a payroll service provider, Paychex wholeheartedly supports this effort. Paychex has been actively involved in joint federal and state projects over the past several years designed to create this type of consistency in definitions. We support these efforts because we see the substantial potential reduction in burden for employers.

Inconsistency in definitions breeds complexity. When employers must contend with different definitions of the same term for different purposes, this only serves to add to the time and effort the employer must expend in understanding and complying with the requirements. It also increases the likelihood of errors as an employer may be unaware that a term such as "wages" is defined differently for different taxes. The time of the employer would be better spent in developing and growing his business and contributing to the positive economic climate of the state.

Creating a uniform definition of wages will simplify the requirements for employers and reduce the burden placed on them as they act as a collection agent for state agencies. We believe this can be accomplished and we voice our support for this effort.

Sincerely,

Larry Sherman
Manager, Electronic Network Services
Paychex, Inc.

EXHIBIT 3
DATE 3/19/97
HB 561

HB 561

Montana Department of REVENUE

STATE OF MONTANA - DEPARTMENT OF LABOR AND INDUSTRY

Project History

- HB 550
  - Cost/benefit analysis
  - Standardized laws
  - Employer/employee dispute resolution (Independent Contractor Central Unit)
  - Joint registration
  - Sharing of audit information

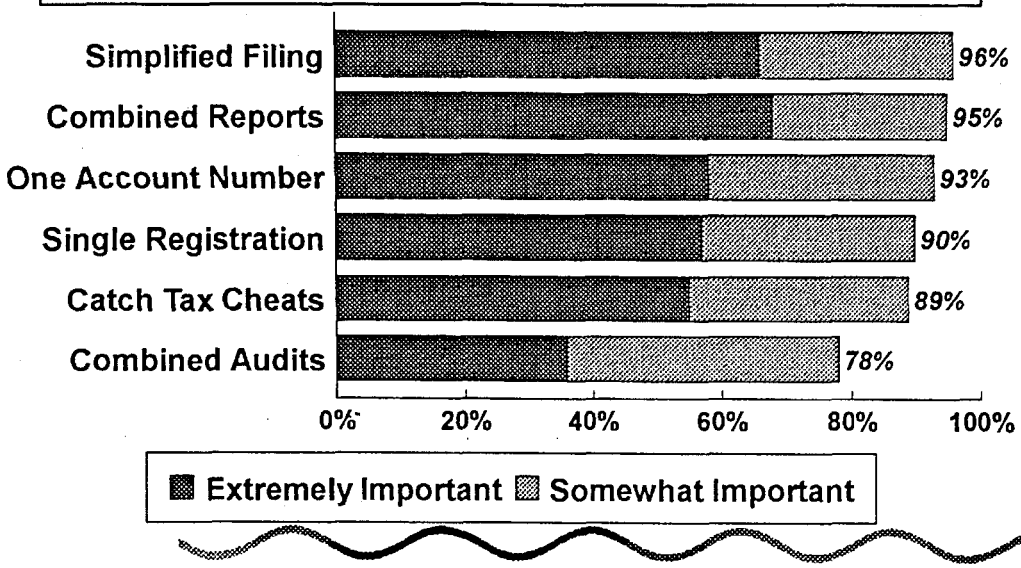
Project History

- Andersen Consulting Cost/Benefit Analysis

Project History

- Andersen Consulting Cost/Benefit Analysis
  - Yearly savings of $400 to $1000 for Montana employers

Question: Assuming the proposed consolidation took place, how would you view the importance of each of the following as a function for this new agency?



Verbatim Responses to Question 8a. Can you tell me in your own words why you favor this proposed consolidation?

- "It's the same numbers I fill out for both departments and I don't see why I can't just fill out one form. It would make things much more simplified."
- "It doesn't make sense to provide the same information to two governmental departments in the same town."
- "It would reduce paperwork and cost. I think that would save us some money."

Project History

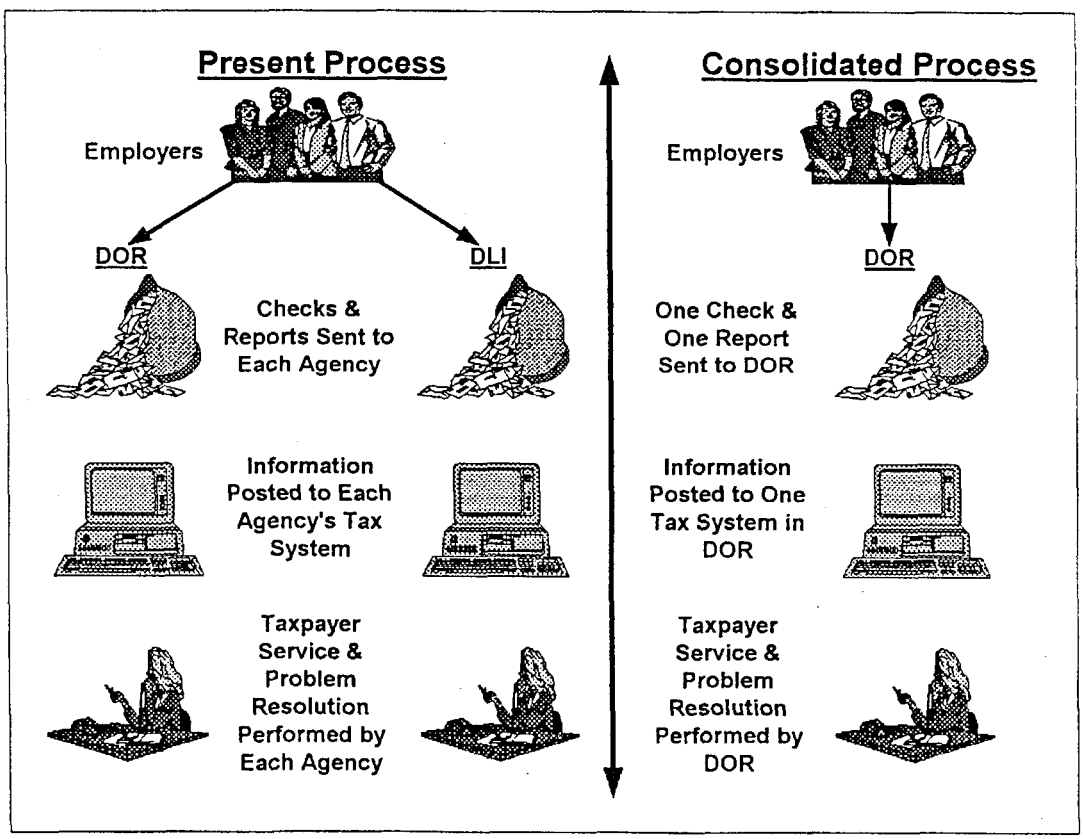
- Andersen Consulting Cost/Benefit Analysis
  - Yearly savings of $400 to $1000 for Montana employers
  - Total savings of $13 million per year

Project History

- Andersen Consulting Cost/Benefit Analysis
  - Yearly savings of $400 to $1000 for Montana employers
  - Total savings of $13 million per year
  - State agency savings of $1 million over 5 years

Comparison of Business Functions

Business Function	DOR	DLI
Employer Registration	X	X
Remittance Processing	X	X
Employee Wage Reporting	X	X
Penalty & Interest Waivers	X	X
Year-End Reconciliation & W-2 Processing	X	
Delinquent Accounts Receivable & Report Collections	X	X
Compliance	X	X
Audit Processing	X	X
Refunds	X	X
Taxpayer Services	X	X
Appeals	X	X
Records & Document Management	X	X
Report Processing	X	X
Experience Rating		X
Status Determination		X

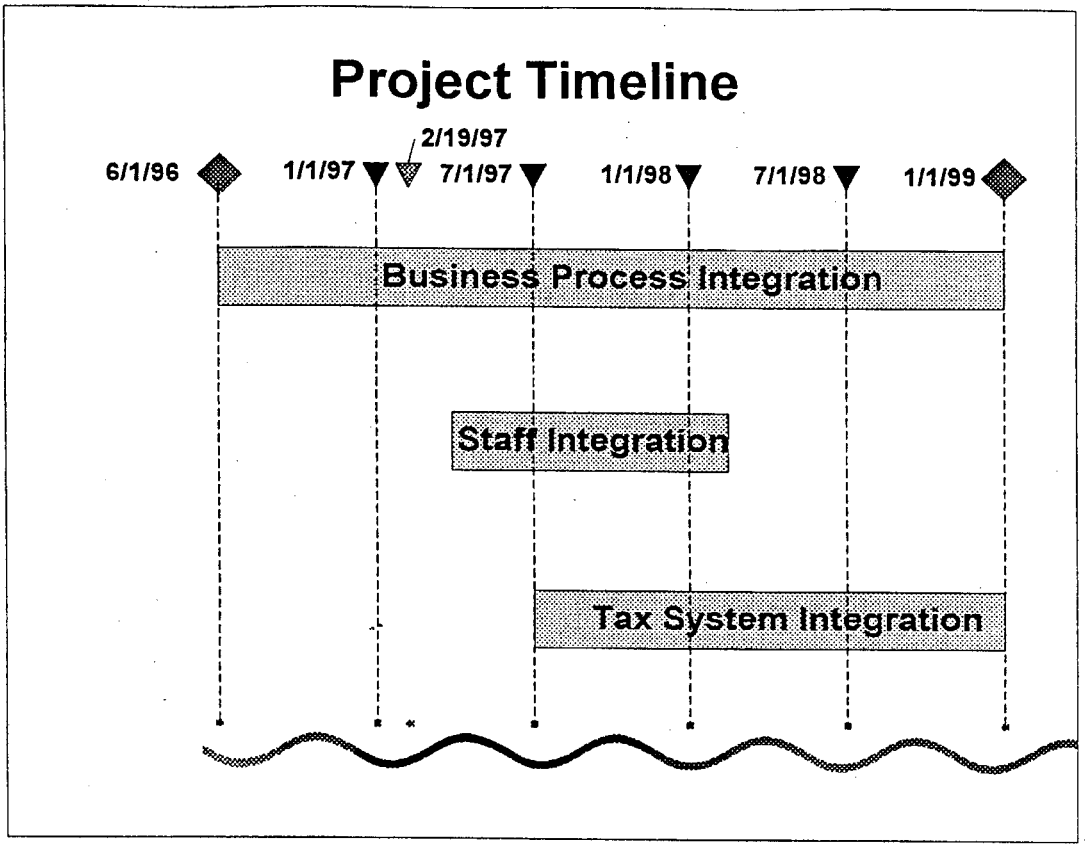

Present Process
Employers
DOR
DLI
Checks & Reports Sent to Each Agency
Information Posted to Each Agency's Tax System
Taxpayer Service & Problem Resolution Performed by Each Agency
Consolidated Process
Employers
DOR
One Check & One Report Sent to DOR
Information Posted to One Tax System in DOR
Taxpayer Service & Problem Resolution Performed by DOR

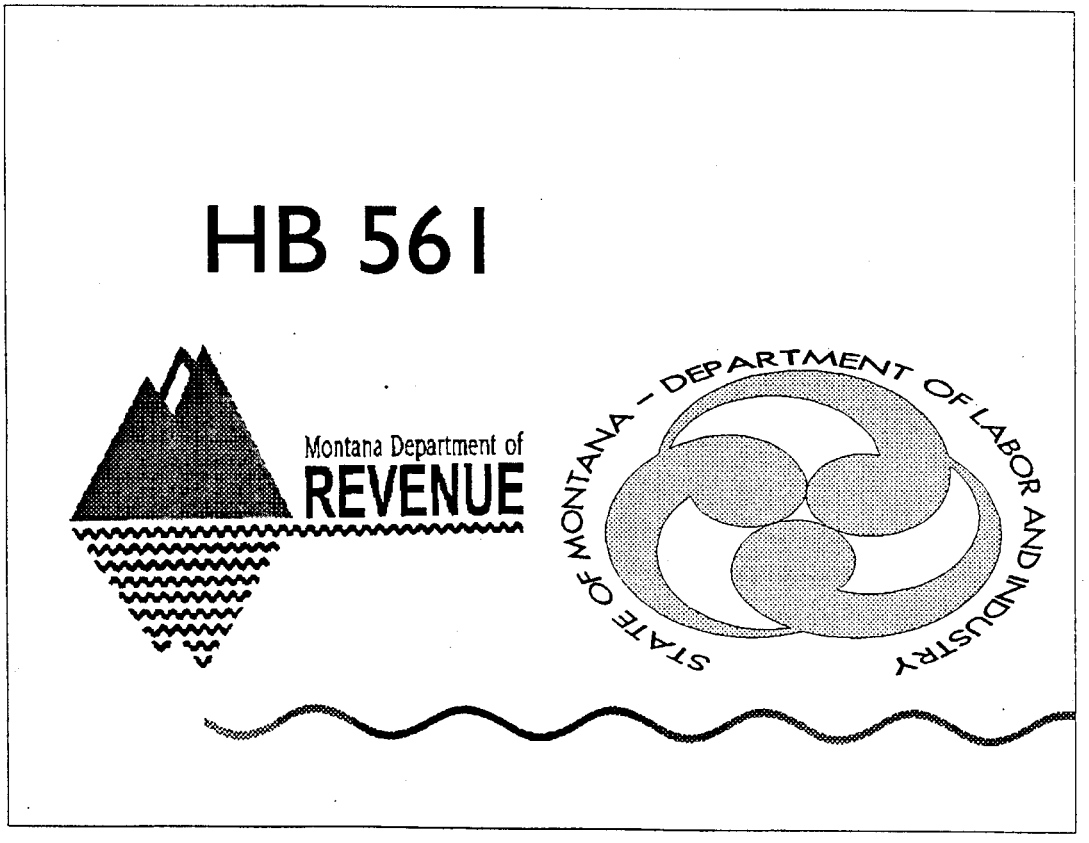
Reduced Administrative Costs

- 9 to 16 less FTE after full integration

Reduced Administrative Costs

- 9 to 16 less FTE after full integration
- Elimination of MAC system charges


Project Timeline
2/19/97
6/1/96
1/1/97
7/1/97
1/1/98
7/1/98
1/1/99
Business Process Integration
Staff Integration
Tax System Integration


HB 561
Montana Department of
REVENUE
STATE OF MONTANA - DEPARTMENT OF LABOR AND INDUSTRY

What Does HB561 Do?

- Harmonizes Definitions of Employment, Wages, and Exemptions.

What Does HB561 Do?

- Harmonizes Definitions of Employment, Wages, and Exemptions.
- Harmonizes Administrative Functions

What Does HB561 Do?

- Provides for Delegation of Certain UI Tax Duties From DLI to DOR

What Does HB561 Do?

- Provides for Delegation of Certain UI Tax Duties From DLI to DOR
- Provides Funding for the Consolidation

EXHIBIT 4
DATE 3/19/97
HB 561

HB 561

CONSOLIDATION OF UNEMPLOYMENT INSURANCE TAX, WITHHOLDING TAX & OFLT

Section by Section Analysis

§ 1	Harmonizes confidentiality statutes by including UI specific requirements in Title 15.
§ 2	Establishes a payment distribution methodology for taxes, penalties, and interest for the combined entity.
§§ 3, 4, 22, and 24	Harmonizes statutes of limitations regarding assessments, refunds, or credits.
§§ 5, 6, 19, and 28	Provides for greater consistency in inclusions/exclusions from employment and a more uniform statutory format.
§§ 7, 9, 21, and 26	Establishes a single appeals process for most tax related issues to be within the purview of DOR and STAB.
§ 8	Provides DOR authority to request court ordered penalties for an employer's failure to file a report.
§§ 10, 18, 27, and 29	Harmonizes definitions for wages, employer, and domestic services.
§ 11	Clarifies that only one account number will be assigned for each employer.
§ 12	Harmonizes individual liability provisions for corporations, limited liability partnerships, and limited liability companies for failure to file required reports and for the payment of tax, penalty, and interest.
§§ 13, 30, 31, and 32	Harmonizes filing and remittance schedules.
§§ 14, 15, 16, and 23	Harmonizes penalty, interest, and collection procedures.
§ 17 and 25	Updates references to specific subsections to reflect harmonization and changes in statute format. Removes unnecessary reference to exclusions from definition of employment in UI law.
§ 20	Provides for the delegation of UI tax activities to DOR.

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Confidentiality - Limitations for sharing information.	1	New Section: Allows DOR to share UI specific information and information common to both UI and DOR with public employees in the performance of their duties.	DOR's current confidentiality provisions are much more restrictive than UI's. The new language will allow the DOR to share employer information currently being shared by UI. There will be no change to the confidentiality provisions for individual income tax or any other tax administered by DOR. UI is required by federal law to share information with certain agencies.	+ Allows DOR to share information directly, rather than handing it off to UID for subsequent distribution.. + Sharing resources for the public good - reduces redundancy in agencies collecting information. + Could be perceived as government sharing tax information too freely.
Payment Distribution Methodology. Establishes a mechanism for distributing taxes penalty and interest collected.	2	New Section: Provides an equitable methodology for distributing payments for UI, W/H, OFLT, and penalty & interest, in cases where the employer fails to make payment in full or to timely file a report	Tax, penalty and interest collected will be applied to the employer's account on the basis of tax paid to total tax due, and distributed to the fund accounts accordingly. If an employer is unable to make full payment, the employer may request the payment be applied to a specific tax. Rules need to be adopted to fully implement this section. Prorating is more equitable than a priority distribution mechanism. If a priority scheme were proposed, taxes with a lower priority may be written off.	+ Cost effective as system versus a person makes payment distribution decisions. + Simple to explain and transparent to the customer. + Allowing employer to direct payment application would allow the employer to apply monies to UI and receive full state credit on FUTA 940 form. + Could leave some small tax debts outstanding so some may think it would be beneficial to pay off small tax debts first.

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Definitions of Employment and Exclusions from Employment. Creates more consistency in the inclusions and exclusions from employment and provides a more uniform format for UI, W/H and OFLT.	5	New Section: Provides a definition of employment and exclusions from employment for DOR income tax withholding, to more closely align with common provisions in UI and OFLT. (Some were previously excluded under "wages".)	The intent for these legislative changes is to: 1) create more common definitions of employment and exclusions from employment; and 2) to make the laws more uniform in sequence and format. Those definitions that are in common appear at the beginning, and most exceptions fall to the end. For UI purposes, no substantive changes were made in the interpretation of what is included or excluded from the definition of employment. Many of the "new" exemptions found in the income tax and OFLT withholding sections of the law are for individuals who consider themselves "self employed" and do not impact revenues. Information on church related legislative proposals were shared with churches (Montana Association of Churches distributed to their membership). Some churches commented that they thought it made sense to cover the church employees with UI. Churches can elect to cover their clergy with workers' compensation if they wanted that protection.	+ Ease to employers by having a consistent format for each law, as well as having more common definitions of employment and exclusions from employment. + Make it easier for employers to report and voluntarily comply with all laws affected. + Some sales businesses may want a broader definition of direct seller. + May result in additional UI tax to insurance and securities businesses.
	6	New Section: Provides a definition of employment and exclusions from employment for DOR OFLT, to more closely align with common provisions in UI and WH.		
	19	Amends 39-51-204, by rearranging exclusions from employment that are in common with WH and OFLT to appear at the beginning, and places those that are unique to UI at the end of that section. Amends family employee exemption to be more uniform with WC. Clarifies direct sellers exemption. Removes exemption for non-clergy church employees and patient of a hospital.		
	28	Amends 39-71-401, employments covered and employments exempted, by changing language on direct sellers and creating an exclusion for ministers to be in common with W/H, OFLT and UI.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Statute of Limitations on Assessments.	3	New Section: Establishes a statute of limitations for assessing DOR state income tax withholding and old fund liability taxes.	The new language in DOR limits the time to one year for revising a return and assessing tax due in the case of an employer who files a return at the end of the five year period. (UI did not adopt that language as they don't go beyond five years to amend reports or audit accounts.) Puts into place the authority for UI to enter into payment agreements with the employer for underpaid taxes. This has been done in practice, but no legal authority existed under current law.	+ More consistent language and easier for an employer to understand. + Requires DOR to assess tax within one year on an amended report that goes back five years or more.
	24	Amends 39-51-1303 to conform with the statute of limitations provisions in new section for DOR. For UI, provides clarification to the five year period to collect assessments. Also provides UI the authority to enter into payment arrangements with an employer.		
Statute of Limitations on Credits and Refunds.	4	New Section: For DOR, provides a five year statute of limitations for claiming a refund or credit, and extends the period for claiming a refund on certain overpaid taxes by one year (i.e. for a tax period beyond five years but paid within past year).	For DOR, the new language extends the period for claiming a credit or refund by one year if an amended return is filed and paid for a period five years back and later that year, discovered the employer actually overpaid when they amended their return. This can also happen, for example, in the case of an employer who is audited five years back, who appeals the audit determination but decides to pay the assessment to avoid accumulating penalty and interest charges, and later that year, the decision is reversed in favor of the taxpayer. Will enable UI to refund or credit employers with overpaid taxes up to prior 5 years, rather than only 3 years.	+ Currently, there is no statutory provision to credit the employer with an overpayment that came as a result of an appeal decision, however, this law would take care of most, if not all, of those situations. + Consistency and fairness in statute of limitations for refunding/crediting employers to be the same as for assessing taxes due.
	22	Conforms 39-51-1110(1), refunds to employers, to DOR proposed statute on credits and refunds. For UI, extends the period for claiming refunds from 3 years to 5 years.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
<u>UI Appeal Procedures Transferred to DOR.</u> Establishes single appeal process in DOR for most UI and DOR employer tax related issues.	7	New Section: Establishes a new appeal procedure in DOR to provide a faster process on tax related cases that involve a UI claimant. Outlines the appeals procedure adopting the UI time lines for appealing a decision.	Establishes a new DOR tax review procedure on cases that involve UI benefit claimants who assert that their employer incompletely or inaccurately reported their wages. Also amends law on state tax appeal board to resolve these UI benefit claimant related cases at a more accelerated pace. Amends UI to provide a dispute resolution process on UI tax related cases through DOR. Employer-employee (independent contractor issues) determinations for UI and DOR will continue to be issued by DLI (ERD) and follow the DLI appeal procedures.	+ Eliminates a potential dual appeal process by having all UI Tax and DOR employer tax related issues processed in DOR. + Provides one decision that is binding for DOR W/H, OFLT and UI. + New Section provides a timely appeal procedure for a UI claimant and affords due process to all parties. + Longer time period for an employer to file an appeal (if there is no claimant involved).
	9	Amends 15-2-302, direct appeal from department decision to state tax appeal board, to provide a specific state tax appeal board procedure on tax related issues that involve a UI claimant.		
	21	Amends 39-51-1109, tax appeals -- procedures for UI, to provide that all UI tax related appeals, except for those that involve an employer-employee relationship and benefit charges to an employer account, will be issued by DOR as provided in Title 15, chapter 30, part 2.		
	26	39-51-2402(1), initial determination--redetermination, is amended to provide that determinations involving subject wages for a claimant will follow a new appeal procedure in DOR as outlined in Section 7.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
DOR Provision to Enforce Employer's Failure to Report.	8	15-1-302(2) is amended to provide legal authority to request the court to order an employer to pay penalties for failure to report.	A penalty is being proposed (Section 16) for non-filing of reports. DOR needs to amend current law to request the court to order the employer to pay this penalty, should the employer fail to submit the report as due. DOR needs to provide for the importance of the report for UI purposes and amend statutes accordingly. This aligns DOR with existing UI law.	+ Provides clear authority for requesting the court to issue an order for paying penalties as a result of employer not following reporting requirements. + Provides incentive in the law to comply with filing requirements.
Harmonize Definitions of Wages, Employer, and Domestic Services	10	Amends 15-30-201 definitions for income tax withholding on "wages", "employer", and "domestic service" to be in harmony with UI, OFLT and WC.	Amends laws to provide for certain common definitions, based on input from an advisory committee and employers who attended open invitation meetings in cities throughout Montana. Though not identical in content, a more common definition and format of wages and exclusions from wages will be particularly helpful to employers. W/H adopted UI definition of "employer" and included "employing unit" which, again, will help employers to understand what taxes they are liable for. In addition, UI, W/H and OFLT had no statutory definition for domestic service, thus adopted WC definition, which is consistent in interpretation.	+ Reduces some of the complexity for employers by providing uniform definitions where possible. + Eliminates sporadic domestic employers from requirement to pay OFLT and of doing reports for diminimus amounts of tax. Eliminates need for agency enforcement in this area which wasn't cost effective to pursue. + Definitions still not in complete harmony so employers still need to know and understand what amounts are subject to each tax type.
	18	Amends 39-51-204 "wages" and "domestic service" definitions for UI to be consistent with W/H, OFLT and WC.		
	27	Amends 39-71-204 wages defined, for WC purposes to more closely align with UI, W/H and OFLT.		
	29	Amends 39-71-2501 definitions for "domestic service", "employer", "employee", and "wages", to more closely align with UI, W/H, and WC.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Report Filing and Remittance Schedules.	13	Amends 15-30-204, reporting and remittance requirements, to provide for remittance schedules based on the size of payroll and quarterly report filing for all employers, except those who are not subject to UI requirements. Adopts UI language on record keeping requirements.	Clarifies and amends DOR state income tax withholding and old fund liability tax statutes in regard to reporting and remittance schedules. With the anticipation of having a combined reporting function with UI, provides for a quarterly reporting requirement for most employers. There is also an annual reporting option for those employers who are not subject to UI. Quarterly wage reporting is needed to timely process UI benefit claims and is a requirement by USDOL. Section 13 provides for alternative reporting and remittance methods. Different effective dates are needed due to the implementation of a new integrated computer system and new processes that will commence on 1/1/99. DOR adopts UI law in regard to record keeping and providing records during the course of an audit or examination. This aligns with current DOR statutes found in the individual income tax sections.	+ Establishes uniform quarterly reporting schedule. + May ease financial woes for some employers who previously filed and paid annually but who now must file and pay quarterly + Allows employers alternatives to standard reporting methods, thus making it easier for those employers who have electronic capabilities. + More closely follows federal remittance schedule. + Options allowed may create confusion for some employers. + Reporting and remittance schedules were changed in last session and this may create more confusion rather than help.
	30 & 31	Amends 39-71-2503, Workers' compensation old fund liability tax to correspond with the filing and remittance requirements. Section 30 is effective 1/1/98 and Section 31 is effective 1/1/99. Also makes reference to employers who are required to withhold and remit OFLT, and when they become liable.		
	32	Amends 39-71-2505, Workers' compensation old fund liability tax to correspond with the filing and remittance requirements.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
<u>UI Appeal Procedures Transferred to DOR.</u> Establishes single appeal process in DOR for most UI and DOR employer tax related issues.	7	New Section: Establishes a new appeal procedure in DOR to provide a faster process on tax related cases that involve a UI claimant. Outlines the appeals procedure adopting the UI time lines for appealing a decision.	Establishes a new DOR tax review procedure on cases that involve UI benefit claimants who assert that their employer incompletely or inaccurately reported their wages. Also amends law on state tax appeal board to resolve these UI benefit claimant related cases at a more accelerated pace. Amends UI to provide a dispute resolution process on UI tax related cases through DOR. Employer-employee (independent contractor issues) determinations for UI and DOR will continue to be issued by DLI (ERD) and follow the DLI appeal procedures.	+ Eliminates a potential dual appeal process by having all UI Tax and DOR employer tax related issues processed in DOR. + Provides one decision that is binding for DOR W/H, OFLT and UI. + New Section provides a timely appeal procedure for a UI claimant and affords due process to all parties. + Longer time period for an employer to file an appeal (if there is no claimant involved).
	9	Amends 15-2-302, direct appeal from department decision to state tax appeal board, to provide a specific state tax appeal board procedure on tax related issues that involve a UI claimant.		
	21	Amends 39-51-1109, tax appeals -- procedures for UI, to provide that all UI tax related appeals, except for those that involve an employer-employee relationship and benefit charges to an employer account, will be issued by DOR as provided in Title 15, chapter 30, part 2.		
	26	39-51-2402(1), initial determination--redetermination, is amended to provide that determinations involving subject wages for a claimant will follow a new appeal procedure in DOR as outlined in Section 7.		

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Update references to specific subsections that change as a result of this proposal.	17	Amend 37-31-101(2) to correct references to subsections of 39-51-204 of UI law that deal with cosmetologist booth rental arrangements.	Revisions are needed to make references in affected laws in harmony with the legislative proposals. Removes unnecessary reference to exclusions from definition of employment in UI Law.	+ Correct subsections would be cited.
	25	Amend 39-51-2108(1) to delete reference to 39-51-204 on exempt employment.		
Delegation of UI Tax Activities to DOR.	20	39-51-301 is amended to provide for the delegation of certain UI Tax related functions to the DOR. Provides employee protection rights and provides for UI employees who are transferred to DOR to be considered internal applicants for one year. Provides for equipment transfer and effective dates for transfer of duties for determining legal authority.	This provision is necessary to enable delegating the various UI tax related duties to DOR on a contracted services basis. The language clarifies that this is not a reorganization of state agencies, but rather a contract of services between two departments. To reduce employee concerns, protection is provided to employees involved in the transfer from UI to DOR in regard to seniority, pay, grade, etc. This section provides for the transfer of equipment, leases and contracts that UI has in place to the DOR. Additionally, this section addresses the date legal responsibility for the transfer of UI tax activities to DOR takes place.	+ Reduces anxiety of change for personnel who will transfer. + Provides fairness to employees who are transferring. + UI maintains oversight responsibility over the UI tax related functions contracted to DOR to provide accountability to US Department of Labor of quality standards necessary to maintain federal funding and offset credit to employers.

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Single Employer Account Number Issued.	11	Clarifies 15-30-202, that DOR assigns only one account number for each employer.	DOR currently has a practice of assigning only one account number for each employer entity, but there have been cases where more than one number was requested and has been assigned. This language is similar to what is in UI, to allow one account number per employer. Upon full integration of data bases, it is necessary to have only one active account number per employer entity.	+ Eliminates any confusion on how many account numbers can be assigned to a single entity. + Facilitates consistency between UI and DOR. + A few employers may prefer to report separately for each business location.
Employer Liability for DOR W/H Taxes and Report Filings.	12	Amends 15-30-203 to adopt language in UI law and DOR administrative rules related to employer liability for corporations, limited liability partnerships and limited liability companies, for the filing of required reports and payment of unpaid taxes, penalties and interest.	Expands the current DOR provision on corporate officer liability and addresses limited liability companies and limited liability partnerships. UI has a similar law in place, thus, this amendment will make laws more uniform.	+ By inserting in law, may be able to eliminate some administrative rules. + Having provision in law is more explicit, easier for employer to locate and understand. + Eliminates confusion to employer on who can be held liable for W/H assessments and non-filed reports.

Topic	Current Methodology	Recommendation	Rationale
⑦ Interest:	UI- 18% Annual (1.5% per month) DOR- 9% Annual (.75% per month)	1.5% Interest per month or any portion of a month; 18% annual	Standardize interest rates between UI and DOR. UI experience has been positive; it works well. Avoids making the State an attractivealternatefinancial institution - encourages compliance. Penalty and interest should be uniform throughout (DOR & UI). The interest is intended to reimburse the state for lost revenue and other costs; the 18% is a fair rate in line with what lending institutions charge but not so low as to avoid compliance.

Topic	Current Methodology	Recommendation	Rationale
④ *Late Payment Penalty:*	UI- 10% of tax due with a $10.00 minimum An additional 5% with a $15.00 minimum after 30 days. DOR- 10% of tax due with a $5.00 minimum OR- In the case of "Habitually Delinquent accounts- 25% of tax with a $25.00 minimum.	**2% of late paid tax, 2% per month or any portion of a month maximum 24%;** *NOTE: Late pay charges may be suspended once an acceptable payment arrangement is made. If customer fails to comply with the terms, penalty is "turned on", and back penalty re-assessed.*	✣ "Time fits the crime" - Currently, customers who file 1 weeks late are penalized the same as those who file 2 years late. Encourages compliance, ensuring smaller payment for early compliance. Other states use the percentage per month schedule in lieu of a graduated penalty for its simplicity and it works well. Easy to compute, explain to employers, understand and compile. No minimum because : ✣ it may encourage a false ZERO filing to avoid penalty ✣ minimums are confusing.
⑤ Late File Penalty	UI- none DOR- $5.00 minimum or 5%	**No tax due, no solicitation:** no penalty **Late File with solicitation:** $50 Penalty	Encourage voluntary compliance, cost beneficial to all. ($5.00 penalty does not achieve compliance, as intended, but is perceived as a nuisance.) -Intent is to reimburse the state for the cost of solicitation and research. -Cost beneficial to pursue. -Encourages future voluntary compliance -Fair to those who voluntarily comply.
⑥ Subpoena:	UI- $40.00 DOR- none	**Subpoena Penalty:** *$50* (in addition to the $50 assessed for Late File) **Non-response to Subpoena:** *$100* (In addition to other penalties assessed)	A $40 subpoena penalty is currently collected by UI, and $50 is consistent with Late File Penalty. UI Penalty works well. UI Subpoena does not require legal support but is an administrative procedure.

Legislative Recommendations, Administrative Subcommittee

Our recommendations are based upon the charge to simplify and streamline operations for both our customers and government.

Topic	Current Methodology	Recommendation	Rationale
① **Filing and Remittance Due Dates:**	**UI-** Quarterly reports and remittance. **DOR-** Depends on calendar liability: "Accelerated" Schedule: Remit and file according to Federal Schedule (>$12,000) "Monthly" Schedule: Remit monthly, file annually ($1,200 - <$12,000) "Annual: Remit and file annually (<$1,200)	"Accelerated" Schedule ()$12,000 state withholding tax) Remittance: Taxes withheld due according to the federal remittance schedule UI and Employer OFLT due Quarterly Report: Due quarterly "Monthly" Schedule: ($1,200 - ($12,000 state withholding tax) Remittance: Taxes withheld due according to federal monthly due date. UI and Employer OFLT due Quarterly Report: Due quarterly Quarterly Schedule: (($1,200 state withholding tax) Remittance and Report: All taxes and reports due quarterly unless Employer is not subject to UI and elects to remit and report annually.	Fairness issue among tax programs: For large and medium employers, consistent with Federal remittance and reporting requirements. State cash flow is not materially impacted. Small employers will have minimum reporting but no more than currently for UI -Less chance of diversion of withholding. For all employers, wage credits are available as before. No change for UI; any other alternative may require some employers to file more often than quarterly. The above aligns employers with the federal remittance and/or filing requirements.
② **Application of Payments**	**UI-** UI Employer Contribution Tax first, then to Administrative Fund Tax. Payments applied to oldest quarter first, unless remitter instructs otherwise or paid with a current report. **DOR-** "Trust based taxes" (Employee Withholding/OFLT) paid first. Applied to oldest quarter first unless remitter instructs otherwise or paid with a current report.	**Prorated on the basis of tax due, (including penalties and interest)** This recommendation assumes one assessment for merged taxes, with one penalty , etc.	If a priority scheme were proposed, taxes with a lower priority may be written off. Cost effective: The system can make the allocations, verses a person. Simple to explain - Transparent to customer.
③ **Penalty and Interest**		**First Time Late** The first time an employer is late a notice will be issued rather than a bill. The notice will include an explanation of the problem and the consequences of further noncompliance.	Fairness issues- The agency has the authority to waive first time delinquencies. Any additional delinquencies are handled on a case-by-case basis. Why create a receivable that will be waived. It's not cost beneficial.

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
c) **Insurance** salespersons	S [9]	E [10]	S	S [9]	S	S	S	S	Make insurance salesperson subject to UI (unless person qualifies as an independent contractor).	Only UI has exemption for insurance salespersons, thus change UI law to be consistent with other tax types.
d) **Securities** salespersons	S [9]	E [10]	S	S [9]	S	S	S	S	Make subject to UI (if person doesn't qualify as an independent contractor).	Of these laws, UI is only one that has an exemption for securities salespersons, thus recommend changing UI to be consistent with other tax laws. Montana UI is one of a few states nationally that has a specific exemption for security salespersons. Change recommended is consistent with FUTA.

[9] Unless person qualifies as an independent contractor

[10] If paid solely by commission

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(10) **Salespersons** a) **Direct sellers** engaged in the sale of consumer products in the customer's home	S [7]	E	E	S [7]	E	E	E	E	Modify language in UI and WC to eliminate reference to I.R.C. and expand on definition. Exempt direct sellers from W/H and OFLT using same language as proposed for UI and WC.	Industry succeeded in exempting direct sellers, to include "Kirby vacuum cleaners, Avon and Tupperware products," from UI and WC in past legislative session. Make law clear with intent and how to interpret, rather than defer to federal statute and court cases. Anticipate little, if any, revenue loss as many of these individuals are issued 1099's and considered self employed.
b) **Real Estate** brokers or salespersons	S [7]	E [8]	E	S [7]	E	E	E	E	Exempt licensed real estate brokers or salespersons from W/H, UI, and OFLT (add "licensed" to law). Delete UI language of "paid solely by commission".	Method of payment did not seem to be the overriding factor for exempting this type of employment. Real estate brokers are to be "licensed" by law, thus, suggest it should be reflected in this statute as well.

[7] Unless person qualifies as an independent contractor

[8] If paid solely by commission

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(8) **Newspaper Carrier** delivering or distributing newspapers to a point for subsequent delivery or distribution	E	E	E	S	E	E	E	E	Exempt newspaper carrier from OFLT.	OFLT is the only tax (of these four taxes) not in harmony. Newspaper industry successfully sought legislation to exempt these individuals from UI and WC. Anticipate little, if any, revenue loss as many of these individuals are issued 1099's and filing as self employed.
(9) **Newspaper Freelance Correspondents**, provided the person is compensated solely by the story or picture	S [6]	E	E	S [6]	E	E	E	E	Make specific exemption for newspaper free lance correspondents from OFLT and W/H.	Newspaper industry successfully sought to exempt these individuals from UI and WC in prior legislative session. Anticipate little, if any, revenue loss as many of these individuals are issued 1099's and filing as self employed.

[6] Unless person qualifies as an independent contractor

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(6) **Petroleum Land Professionals** who are free from control and direction, work under a written contract and meet other requirements	S[5]	E	E	S[5]	E	E	E	E	Make a specific exemption for qualified petroleum land professionals from OFLT and W/H.	The land petroleum industry successfully sought legislation in the past for these exemptions to UI and WC. Most of these individuals file as self employed, thus, there would be little, if any, revenue loss to OFLT.
(7 a) **Ministers** of churches and members of a religious order performing duties as such	E	E	S	S	E	E	E	E	Exempt ministers from WC and OFLT, with the ability to elect WC coverage.	In many cases, ministers are considered self employed, thus, little impact to OFLT revenues. Ministers can elect WC coverage if it is desired. Proposal maintains consistency with FUTA.
b) **Other Church Employees**	S	E	S	S	S	S	S	S	Make church employees (non-clergy) subject to UI.	Many churches currently elect to have UI coverage on their employees. UI tax rates are relatively low and church can elect to reimburse the fund rather than pay tax on wages. UI benefits would be available to church employees in the event of layoff. Churches responded favorably to this proposal.

[5]Unless person qualifies as an independent contractor

Special Classes of Employment and Types of Payment	W/H	UI	WC	OFLT	W/H	UI	WC	OFLT	Recommendation	Rationale
(4) **Family Employees** (spouse, child or parent of sole proprietor)	S	E [3]	E	S	E	E	E	E	Modify UI to exempt sole proprietor's dependents for whom an employer may claim an exemption under I.R.C. Adopt similar exemption for W/H and OFLT. Clarify language to state that the spouse of a sole proprietor is exempt, and allow for voluntary individual income tax withholding.	Many employers prefer not to pay UI on dependents whether under 21 or not. Dependents are not as likely to depend on UI benefits if employment is terminated. Makes law clear that spouse's wages are not subject regardless if spouse is a business partner or an employee. Reduces litigation in this area. Unlikely there is an income tax liability for dependent children; however, if there is, it would be paid at the time the individual return is filed.
(5) **Flooring Installers** who are free from control and direction, work under a written contract and meet other specified requirements	S [4]	E	E	S [4]	E	E	E	E	Make a specific exemption for qualified flooring installers from OFLT and W/H.	The floor covering industry successfully sought legislation in the past for these exemptions to UI and WC. Most of these individuals file as self employed, thus, there would be little, if any, revenue loss to OFLT.

[3] UI definition exempts employment of sole proprietor's spouse, parent, or children under age 21

[4] Unless person qualifies as an independent contractor

Proposals to Harmonize

MONTANA STATE TAX CHART

W/H = Income Tax Withholding
UI = Unemployment Insurance
WC = Workers' Compensation
OFLT = Old Fund Liability Tax
S = Subject, E = Exempt

	- - Current Law - -				*- - Proposed Law - -*					
Special Classes of Employment and Types of Payment	**W/H**	**UI**	**WC**	**OFLT**	**W/H**	**UI**	**WC**	**OFLT**	**Recommendation**	**Rationale**
(1) **Casual Labor** not in the course of the employer's trade or business	E	E	E	E	E	E	E	E	Adopt UI language for W/H and OFLT.	Consistent language and interpretation will result in better understanding by employers.
(2) **Cosmetologists or Barbers**, who are free from control, work under a written contract and meet other requirements in UI and WC law	S [1]	E	E	S [1]	E	E	E	E	Exempt qualified cosmetologists and barbers from OFLT and W/H.	Cosmetologists and barbers successfully sought legislation in the past for these exemptions to UI and WC. Most of these individuals file as self employed, thus, little if any, revenue loss to OFLT.
(3) **Domestic or Household Service** in a private home, local college club or local chapter of a college fraternity or sorority	E	E [2]	E	S	E	E	E	E	Adopt UI coverage threshold of $1,000 in cash paid per quarter for W/H and OFLT. Leave exempt from WC due to equal protection laws.	Eliminates problems associated with enforcing compliance on sporadic domestic employment. Insignificant OFLT revenue loss; unlikely most domestic employers are complying now. Provides UI benefits to household employees who are currently covered. Consistent with FUTA requirements. More consistent with the "Nanny Tax" concept.

[1] Unless person qualfies as an independent contractor

[2] If total wages are under $1000 in cash in any calendar quarter

Analysis of UI/DOR Consolidation Bill

General Description of Proposed Change	Bill Section	Affect of New Section or Amendment	Further Information	Comments or Concerns
Penalty, Interest and Collection Procedures.	14	Revises 15-30-207 by moving subsection (3) in regard to penalties, into a section for penalties, interest, and collection procedures, thus having all pertinent provisions in one location.	The purpose behind this proposal is to provide for a common rate of penalty and interest as well as common collection remedies for both DOR and UI. We recommend a 1/1/99 effective date as this provision requires a new integrated computer system to implement, and the expected date for a new system to be operational is 1/1/99. The outcome will be that an employer will receive one statement for UI and DOR employer taxes and will work through one agency to make payment or payment arrangements. UI interest rate is currently 18% per annum. Amendment aligns the interest rates. Interest rate increases from 9 or 12% to 18% for DOR and the $50 penalty for late filing is completely new for UI. These concepts were presented to employers at area meetings throughout Montana and was fully supported.	+ Encourages voluntary reporting yet allows agency to be compensated for costs of collection activity. + First time waiver eliminates the need for employer to request waiver and eliminates the unnecessary paperwork and the manual waiver process. + Fair penalty - "Time fits the Crime" by assessing penalty based on lateness of filing. + Penalty and interest charges are cost beneficial to pursue. Employer may be more apt to pay state than other debts that currently have higher interest rates. + Easy to compute, simple to explain.
	15	Revises 15-30-208 by moving subsections (2),(3) and (4) in regard to "warrants to collect" into a single section for penalties, interest, and collection procedures, thus having all pertinent provisions in one location.		
	16	Revises 15-30-209, violations by employer -- penalties and remedies, to include the rate of interest on overdue taxes. Amendment provides a waiver for first time late filing or remitting, a $50 penalty for subsequent late filing, a $50 penalty for issuing a subpoena to secure a non-filed report or non-paid assessment, and $100 penalty for non-compliance with a subpoena. Assesses interest at the rate of 18% annually and penalty at 2% per month up to a maximum of 24% on unpaid taxes.		
	23	Amends 39-51-1301, penalty and interest on past due taxes, to include waiver of penalty on first time late report or remittance, a $50 penalty on past due reports, a $50 subpoena penalty (increased from $40 currently), and a $100 penalty for non-compliance with a subpoena.		

EXHIBIT 5
DATE 3/19/97
HB 561

Amendments to House Bill No. 561
Second Reading Copy

Requested by Senator Sprague
For the Committee on Taxation

Prepared by Lee Heiman
March 18, 1997

1. Page 5, lines 3 through 7.
Strike: ". As" on line 3 through "employee" on line 7
Insert: "as defined by 26 U.S.C. 3508"

2. Page 7, lines 27 through page 8, line 1.
Strike: ". As" on page 7, line 27 through "employee" on page 8, line 1
Insert: "as defined by 26 U.S.C. 3508"

3. Page 31, line 27 through page 32, line 2.
Strike: "." on page 31, line 27
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on page 31 line 27 through "employee" on page 32, line 2

4. Page 43, lines 24 through 29.
Strike: "." on page 31, line 24
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on line 24 through "employee" on line 29

24.11.831 DEFINITION OF DIRECT SELLER (1) As provided by law, the term "direct seller" has the same meaning as provided by 26 USC 3508.

(2) Generally, a direct seller is a person:

(a) who sells, or offers for sale, a consumer product (meaning tangible items, such as vacuum cleaners, cleaning products or cosmetics, as opposed to services) at the home of the consumer;

(b) whose pay is determined by the quantity of product sold; and

(c) who works under a written contract that states the person will not be treated as an employee.

(3) For the purposes of this chapter, the term "direct seller" must be interpreted in accordance with federal tax cases construing the meaning of the term "direct seller". In the event that there is no Montana case on point, and there is a conflict among case decisions, decisions arising out of the federal circuit of which Montana is a member will be followed. (History: 39-51-302 MCA; IMP, 39-51-204 MCA; NEW, 1995 MAR p. 1950, Eff. 10/1/95.)

Rule 24.11.832 reserved

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors, working members of a partnership, or members of a member-managed limited liability company that has filed with the secretary of state;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(p) employment of a direct seller as defined in 26 U.S.C. 3508;

(q) services performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(2) Employment does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is

nished (or if later, the first day of the calendar year for which furnished).

(B) Later certificate. An earned income eligibility certificate furnished the employer in cases in which a previous such certificate had been in effect for the calendar year shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section, the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(2) Period during which certificate remains in effect. An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) Change of status.

(A) Requirement to revoke or furnish new certificate. If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 32 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

(B) Certificate no longer in effect. If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) Form and contents of certificate. Earned income eligibility certificates shall be in such form and contain such other information as the Secretary may by regulations prescribe.

(5) Taxable year defined. The term "taxable year" means the last taxable year of the employee under subtitle A beginning in the calendar year in which the wages are paid.

(f) Internal Revenue Service notification.

The Internal Revenue Service shall take such steps as may be appropriate to ensure that taxpayers who have 1 or more qualifying children and who receive a refund of the credit under section 32 are aware of the availability of earned income advance amounts under this section.

In '94, P.L. 103-465, Sec. 721(c), added the last sentence at the end of para. (c)(1), effective for remuneration paid after 12/31/94.

In '93, P.L. 103-66, Sec. 13131(d)(4), redesignated paras. (b)(2) and (3) as paras. (b)(3) and (4) and added new para. (b)(2)... Sec. 13131(d)(5), amended clauses (c)(2)(B)(i) and (ii)... Sec. 13131(d)(6), added subsec. (f), effective for tax. yrs. begin. after 12/31/93.

Prior to amendment, clauses (c)(2)(B)(i) and (ii) read as follows:

"(i) of not more than the credit percentage under section 32(b)(1) (without regard to subparagraph (D) thereof) for an eligible individual with 1 qualifying child and with earned income not in excess of the amount of earned income taken into account under section 32(a)(1), which

"(ii) phases out between the amount of earned income at which the phaseout begins under section 32(b)(1)(B)(ii) and the amount of income at which the credit under section 32(a)(1) phases out for an eligible individual with 1 qualifying child, or"

In '90, P.L. 101-508, Sec. 11111(c), amended subparas. (c)(2)(B) and (c)(2)(C), effective for tax. yrs. begin. after 12/31/90.

Prior to amendment, subparas. (c)(2)(B) and (c)(2)(C) read as follows:

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than 14 percent of earned income not in excess of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between the amount of earned income at which the phaseout begins under subsection (b) of section 32 and the amount of earned income at which the credit under section 32 is phased out under such subsection, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than 14 percent of earned income not in excess of ½ of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between amounts of earned income which are ½ of the amounts of earned income described in subparagraph (B)(ii)."

In '86, P.L. 99-514, Sec. 111(d)(2), amended clauses (c)(2)(B)(i) and (c)(2)(B)(ii)... Sec. 111(d)(3), amended clauses (c)(2)(C)(i) and (c)(2)(C)(ii), effective for tax. yrs. begin. after 12/31/86.

Prior to amendment, clauses (c)(2)(B)(i) and (c)(2)(B)(ii) read as follows:

"(i) of not more than 11 percent of the first $5,000 of earned income, which

"(ii) phases out between $6,500 and $11,000 of earned income, or"

Prior to amendment, clauses (c)(2)(C)(i) and (c)(2)(C)(ii) read as follows:

"(i) of not more than 11 percent of the first $2,500 of earned income, which

"(ii) phases out between $3,250 and $5,500 of earned income."

—P.L. 99-514, Sec. 111(e), provides as follows.

"(e) Employee notification.—

"The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that such employee may be eligible for a refund because of the earned income credit."

In '84, P.L. 98-369, Sec. 474(r)(30), substituted "section 32" for "section 43" each place it appeared in subsections (b), (c) and (e), effective for tax. yrs. begin. after 12/31/83, and to carrybacks from such years.

—P.L. 98-369, Sec. 1042(d)(3), amended clauses (c)(2)(B)(i) and (ii)... Sec. 1042(d)(4), amended clauses (c)(2)(C)(i) and (ii), effective for tax. yrs. begin. after 12/31/84.

Prior to amendment, clauses (c)(2)(B)(i) and (ii) read as follows:

"(i) of not more than 10 percent of the first $5,000 of earned income, which

"(ii) phases out between $6,000 and $10,000 of earned income, or"

Prior to amendment, clauses (c)(2)(C)(i) and (ii) read as follows:

"(i) of not more than 10 percent of the first $2,500 of earned income, which

"(ii) phases out between $3,000 and $5,000 of earned income."

In '80, P.L. 96-222, Sec. 101(a)(2)(D), changed the effective date for amendments made by Sec. 105(b)(1) of P.L. 95-600, from remuneration paid after 6/30/78, to remuneration paid after 6/30/79, see below.

In '78, P.L. 95-600, Sec. 105(b)(1), added Code Sec. 3507, effective [as amended by Sec. 101(a)(2)(D) of P.L. 96-222, see above] for remuneration paid after 6/30/79.

Sec. 3508. Treatment of real estate agents and direct sellers.

(a) General rule.

For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) Definitions.

For purposes of this section

(1) Qualified real estate agent. The term "qualified real estate agent" means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) Direct seller. The term "direct seller" means any person if—

(A) such person

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) Coordination with retirement plans for self-employed. This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

In '82, P.L. 97-248, Sec. 269(a), added Code Sec. 3508, effective for services performed after 12/31/82.

Sec. 3509. Determination of employer's liability for certain employment taxes.

(a) In general.

If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

(1) Withholding taxes. Tax under chapter 24 for such year with respect to such employee shall be determined as

EXHIBIT 6
DATE 3/19/97
HB 561

Mary Bryson
Department of
Revenue

House Bill 561 Testimony

Mr. Chairman and members of the committee...name...representing...I rise in strong support of this legislation. Although I have just joined the Department of Revenue, I have reviewed this project and the extensive amount of work done to date. I am convinced of the project's merits and especially interested in this project as it fits within my vision for the department.

This is not a new idea - in my years as a legislative auditor, more than once the question was raised about bringing these functions together. The governor and this legislative body have recognized the need to consolidate employer wage reporting. That history will be discussed briefly this morning. I want to talk briefly about why I believe HB 561 fits with a reengineered department of revenue.

I view the department of revenue as one designed around business processes and an integrated environment which will lead the way toward streamlining state government. As we speak this morning the department is attempting, with the support of this legislature, to bring forward a number of initiatives that will move the department toward better customer service and the 21st century. These initiatives include: the Revenue Processing Center, One-stop business licensing as proposed by Representative Rose in HB 391, State/federal initiatives to pursue single point of filing both state and federal employer quarterly reports, customer service initiatives like telefile, electronic filing of tax returns, electronic funds transfer, direct deposit, and a customer service initiative to allow the department to assign federal employer id numbers (EINs).

We believe HB 561 continues to move us toward a citizen centered government and away from what might be called a "siloed approach" that agencies have developed over time. Our taxpaying public views us as one government, not several unique agencies. They also view the DOR as one agency, not several divisions. Separating standalone and unique processes may have made sense for the agencies at one time, but make little sense to the customer of government who presently needs to file several reports to different agencies for tax purposes.

We at the DOR are pleased to have the opportunity to house the combined employer wage reporting function for state government. Why the DOR?

First - We have already developed a significant infrastructure with our employer OFLT and WH taxes along with some 30+ other tax types. In addition, we have registered over 37,000 employers who continue to transact business with us on a weekly, monthly or annual basis. We are a fairly visible point of contact for the employer.

Second - Our experience with consolidating OFLT into our WH reporting framework and our study of further consolidations has convinced us of the merits of these kinds of efforts to create a single point of service.

We have a vision in the department to aggressively pursue initiatives like HB 561. As you will hear this morning, this project has been carefully researched, designed with employer input and customer service as the paramount goal. This proposal is well developed and positioned to lead our efforts toward a reengineered DOR.

Again, we see HB 561 as an excellent opportunity to improve customer service and our image as an enterprise. Montana is the first state to move boldly in this area and I strongly encourage you to give this bill a do pass.

Thank you.

EXHIBIT 7
DATE 3/19/97
HB 561

March 7, 1997

Gerry Devlin, Chair
Montana Senate Taxation Committee
(6R-3D)
State Capitol
Helena, MT 59620

Re: RSI Opposition of Montana H.B. 561 Independent Contractor Status

Dear Mr. Devlin:

I am writing to you on behalf of Rexall Showcase International, Inc. ("RSI"), a Florida corporation, concerning H.B. 561 which will come before the Senate Taxation Committee. The purpose of this letter is to advise the Senate Taxation Committee of RSI's strong opposition to the passage of H.B. 561.

By way of brief background, RSI distributes and markets a distinctive line of health and wellness products, including health and nutritional supplements, weight management products, homeopathic medicines, skin care and water filter devices through a sales force of self-employed independent distributors, also known as direct sellers. Currently direct sellers in Montana are classified as independent contractors and exempt from unemployment and workers' compensation law. Passage of H.B. 561 would redefine a direct seller as those persons who sell "tangible consumer products, including, but not limited to cosmetics, vacuum cleaners, and cleaning products." It is the specific reference to only three types of products that we find disturbing and we are opposed to a portion of sections 5, 6 and 19 of the bill due to the limitations of the proposal's applications.

Direct selling is not based on the products that one sells, but rather on how one conducts one's business operations. Independent contractors who sell vacuum cleaners, cosmetics or cleaning products are no different than independent contractors who sell other products. Many of the products that are sold by the more than 15,000 direct sellers in Montana are not mentioned in the bill.

The existing Montana law is based on a federal statute in existence since 1982. Many other states also exempt direct sellers from unemployment and workers' compensation using language that is similar to the Montana law. Twenty-one of the 30 states that have this exemption use language that is *identical* to the language in the existing Montana law. It seems clear that the trend in recent years is to use the Montana language.

In conclusion, for the reasons stated above, RSI requests that you carefully consider opposing H.B. 561 when it comes before the Senate Taxation Committee and avoid the subjective limitation of this bill.

Very truly yours,

Richard S. Werber
Vice President and
General Counsel

RSW:ss
cc: Direct Selling Association

INTERNATIONAL CORPORATE HEADQUARTERS
853 Broken Sound Parkway NW, Boca Raton, FL 33487-3694 • (407) 994-2090
FAX (407) 241-5319

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avon

Avon Products, Inc.
Nine West Fifty Seventh Street
New York, NY 10019-2683
Tel. 212 546 6015

March 10, 1997

The Honorable Gerry Devlin, Chairperson
Montana Senate Taxation Committee
State Capitol
Helena, MT 59620

Re: Montana H.B. 561
Independent Contractor Status Limitations on Direct Sellers

Dear Chairperson Devlin:

We are writing in opposition to the portions of H.B. 562 (Sections 5,6 and 19) which would limit the statutory classification of direct sellers as independent contractors to those who sell cosmetics, among other unidentified tangible consumer products.

The long-standing recognition of direct sellers as independent contractors was codified by the Congress in 1982 with changes to the Internal Revenue Code under Section 3508. This section statutorily defines direct sellers as non-employees for federal employment tax purposes. Some 30 states, including Montana, have made similar statutory classifications of direct sellers as non-employees.

Products offered by direct sellers have no bearing on their independent contractor status. Rather the status is determined by what a direct seller does, i.e. selling products at a non-retail location (the customer's home) at hours she sets to meet her personal sales goals. This clearly distinguishes the direct seller from an "employee".

SPONSOR OF THE 1996 U.S. OLYMPIC TEAM

USA

36 USC 380

We urge your no vote on Sections 5, 6 and 19 of H.B. 561 to preserve the independent contractor status of direct sellers in Montana by the law currently in effect.

Thank you for your consideration and support.

Sincerely,

Mary Ann Dirzis

Mary Ann Dirzis
Director
Government Affairs

MAD/js
cc: Montana Senate Taxation Committee

FAX - URGENT

Date: 3/10/97

To: Montana Senate Taxation Committee
Gerry Devlin

ATTN: Gerry Devlin, Mike Foster, MARK COLE, Bob Deprato, Dorothy Eck, Bill Glaser, Mike Sprague, Barry Stang, Fred Van Valkenberg

Phone:

Fax Phone: (406)444-3036

From: Leila Brumit
4425 Sundown Rd.
Missoula, Mt. 59804

Phone: (406)721-0208

Fax Phone: (406)721-8443

Number of pages including cover sheet: 2

RE: HB #561

My name is Leila Brumit and I am a direct seller in Missoula. I am an independent consultant for Body Wise, Int. and I sell nutritional supplements. Body Wise, Int. is a member of the Direct Selling Association.

I understand that this bill is coming up for vote soon and I wanted to voice my concern about some language in this bill. This bill would redifine a Direct Seller as those persons who sell "tangible consumer products, including, but not limited to cosmetics, vacuum cleaners, and cleaning products." I find this bill's language gives advantage to a few direct sellers while leaving others open to all kinds of problems and uncertainties. Direct Selling isn't based on the type of products or services one sells, but on how independent business-people conduct their operations. All direct

their product or service might be, and I find the existing laws to be quite sufficient. I understand that at least 21 states that exempt direct sellers from workers' and unemployment compensation use language identical to Montana's and some 9 or so other states use language very similar to Montana's. So, why change a law that obviously works fine and has been used as a model for other states' laws?

I would appreciate it if you would oppose sections 5, 6 and 19 of House Bill 561 as drafted.

Thank you for your attention in this matter.

Sincerely,

Lila P. Brumit

cc. DSA

FACSIMILE TRANSMISSION

FROM

FISHMAN & MERRICK, P.C.

30 NORTH LASALLE STREET
SUITE 3500
CHICAGO, ILLINOIS 60602

FAX NUMBER:
(312) 726-2649

Other numbers:
TELEX:
728386 HQ LOOP CGO

TELEPHONE SWITCHBOARD:
(312) 726-1224

TO: Montana Senate Taxation Committee

ATTENTION/REFERENCE: Gerry Devlin, Chair

FROM: John M. Klimek

OUR REFERENCE/MATTER: Montana H.B. 561

MESSAGE (if any):

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

TOTAL NUMBER OF PAGES (including this page) 3

If you do not receive all pages, or any portions of the transmission are illegible, please notify us via our Telephone Switchboard, immediately.

FULL FAX NO. OF ADDRESSEE	DATE SENT	FAX OPERATOR
(406) 444-3036	03/12/97	Debbie
OUR FILE NO.	TIME STARTED	CH.
1092-92225		

FISHMAN & MERRICK, P.C.

30 NORTH LA SALLE STREET
SUITE 3500
CHICAGO, ILLINOIS 60602

(312) 726-1224

FACSIMILE (312) 726-2649
TELEX 728388 HQ LOOP CGO

THE TRADERS BUILDING
401 S. LA SALLE STREET
SUITE 1302
CHICAGO, ILLINOIS 60605
(312) 786-5100

FACSIMILE (312) 786-5111

JOHN M. KLIMEK

March 12, 1997

VIA FACSIMILE

Mr. Gerry Devlin
Montana Senate Taxation Committee
State Capitol
Helena, MT 59620

Re: Montana HB 561

Dear Mr. Devlin:

We represent several companies in the direct selling industry and we are writing to voice our opposition to Montana HB 561 which would amend legislation passed in Montana 3 three years ago which statutorily classified direct sellers as independent contractors, thus, exempting them from unemployment and worker's compensation law. HB 561 would limit the exemption provided by such statute.

The current legislation is in accord with the laws of 30 other states with respect to the classification of direct sellers, 21 of which states use language that is identical to Montana's. The current statute is also consistent with treatment of direct sellers under Federal law.

There are over 15,000 direct sellers in Montana, and the current legislation provides them with assurance of their tax status. The proposed legislation would confuse the legal landscape by drawing an artificial line on the treatment of direct sellers by reference to the type of product they sell. We see no reason why a direct seller selling certain products should be differentiated from a direct seller selling services or other products. Classification of whether or not an individual is a direct seller should not be based on the product or service sold but on the way in which such individual conducts his or her business.

FISHMAN & MERRICK, P.C.

Please do not hesitate to call me should you have any questions or comments.

Very truly yours,

John M. Klimek
for FISHMAN & MERRICK, P.C.

JMK/db
F:\WPDOCS\1092\92225\DAB4776.WPD
cc: Direct Selling Association

March 12, 1997

Office of General Counsel

Gerry Devlin, Chair
Montana Senate Taxation Committee
State Capitol
6R-3D
Helena, MT 59620

VIA FACSIMILE: (406) 444-3036

Dear Representative:

On behalf of the customers and independent representatives of Excel Communications, Inc. in Montana, I am writing in opposition to House Bill 561. The changes proposed in this bill, which would redefine the definition of a "direct seller," would have a devastating effect on our independent representatives.

Excel is a provider of long distance service and uses independent representatives to sell this service. In addition, Excel's independent representatives also sell paging services to their customers. Accepting the unnecessary language proposed by the Montana Department of Revenue and the Department of Labor and Industry would dramatically change the way Excel representatives operate their businesses in Montana.

There are two significant reasons why we oppose sections 5, 6, and 19 of H.B. 561. First, existing Montana law closely tracks language found in over 20 states. In addition, 30 states exempt direct sellers from workers' and unemployment compensation coverage. This is a position that is consistent with a federal statue which has been in existence since 1982. Second, direct sellers are engaged in selling more than just "vacuum cleaners, cosmetics or cleaning products." The proposed restrictive language would effectively deny the citizens of Montana the opportunity to buy goods and services from many direct sellers and also deny your constituents the opportunity to establish their own businesses.

Therefore, for the reasons stated above, we strongly urge you to vote against H.B. 561. Than you for your thoughtful consideration of this matter.

Very truly yours,

Kerry Tassopoulos
Director, Government Affairs

KT/tjf
cc: Eric Ellman, DSA

MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE

ROLL CALL DATE 2/19/97

NAME	PRESENT	ABSENT	EXCUSED
MACK COLE	✓		
BOB DE PRATU	✓		
DOROTHY ECK	✓		
BILL GLASER	✓		
MIKE SPRAGUE	✓		
BARRY "SPOOK" STANG	✓		
FRED VAN VALKENBURG	✓		
MIKE FOSTER, VICE CHAIRMAN	✓		
GERRY DEVLIN, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

DATE 3-19-97

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB561

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Jeff Miller	DOR	HB561	✓	
DENNY ZEILER	DOL - UI DIVISION	HB561	✓	
Maxine Morehouse	Capital Sports + Western	HB561	✓	
ERIC ELLMAN	DIRECT SELLING ASSN.	HB561	w/ amend.	
Erin ROWE-GRAVES	AMWAY CORP.	HB561	w/ amend	
Brad Griffin	MT Retail Assoc	HB561	w/ Amend	
Bob Gilbert	JSEC.	HB561	✓	
Mary Bryson	DOR	HB561	✓	
Gloria Paladichuk	Richland Dev.		✓	
David Ohlson	MT Chamber	HB561	✓	
Pat Haffey				
Dennis Burr	Taxpayers	HB561	✓	
Dave Brown	self	HB561	w/ Amdt	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

SEN. MIKE FOSTER updates **CHAIRMAN DEVLIN** on the substance of the bill; it requires a one time payment for property taxes that are less than $25.00 for the second half. The sponsor had intended to provide for installment payments - that became the controversial part of the bill and has been taken out.

SEN. DOROTHY ECK comments people would be interested in paying their taxes in full if they were to receive a discount equal to the interest they would have gained on the money. She suggests this might be a way to "fix" this bill.

MOTION/VOTE: **SEN. BOB DEPRATU MOVED HB 516 BE TABLED. MOTION CARRIED 6-3 with SEN. SPRAGUE, SEN. STANG and SEN. ECK voting no.**

EXECUTIVE ACTION ON HB 596

{Tape: 1; Side: B; Approx. Time Count: 8.1; Comments: None.}

MOTION: **SEN. WILLIAM GLASER MOVED HB 596 BE CONCURRED IN.**

DISCUSSION:

SEN. BARRY STANG asks if this bill will allow anyone to "escape" from paying who is paying currently. **Mr. Chenoweth** indicates no; this will only avoid double taxing.

SEN. WILLIAM GLASER comments this might even increase revenue.

VOTE: **MOTION THAT HB 596 BE CONCURRED IN CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 561

{Tape: 1; Side: B; Approx. Time Count: 10.6; Comments: None.}

Jeff Martin explains there are three sets of amendments to this bill: one deals with the individual liability issue; the second deals with the direct seller issue as well as repealing an Administrative Rule; the third set is a coordinating instruction with SB 67.

AMENDMENTS 56102.ajm **EXHIBIT 2**
This is a combination of the **SPRAGUE** amendment and the "whereas" clauses which state the reason for the repeal.

AMENDMENTS 56105.ajm **EXHIBIT 3**
This amendment refers again to the Administrative Rule.

MOTION: **SEN. MIKE FOSTER MOVED ADOPTION OF AMENDMENTS 56105.ajm WITH THE WORD "INADVERTENTLY" SEGREGATED OUT.**

DISCUSSION:

SEN. FRED VAN VALKENBURG asks several questions of **Mr. Dennis Zeiler, Department of Labor and Industry** relative notification of Direct Sellers prior to the meetings that were held regarding this issue. He also inquires specifically if Mr. Dave Brown received a copy of the notice regarding the proposed rule. **Mr. Zeiler** responds the packet that was provided to the Committee contains a listing of all who were notified. He indicates the list is long and he can't immediately find Mr. Brown's name on the list, but it may be there. He also points out there were two kinds of meetings; one for Legislators only and one for the general public.

CHAIRMAN DEVLIN asks if the bill sponsor was notified. **Mr. Zeiler** indicates both **REP. ROBERT PAVLOVICH and SEN. TOM BECK** were notified.

SEN. MIKE SPRAGUE notes it's a good thing the problem was discovered and we can move on; we rely heavily on people to explain bills as clearly as possible as we can't read and/or understand everything.

VOTE: **MOTION TO ADOPT AMENDMENT 56105.ajm WITH THE WORD "INADVERTENTLY" SEGREGATED OUT CARRIED UNANIMOUSLY.**

AMENDMENTS 56101.ajm **EXHIBIT 4**
This set of amendments clarifies the person within a corporation who has the liability to withhold and pay the taxes.

MOTION/VOTE: **SEN. BOB DEPRATU MOVED ADOPTION OF AMENDMENTS 56101.ajm. MOTION CARRIED UNANIMOUSLY.**

AMENDMENTS 56104.ajm **EXHIBIT 5**
This is the coordination language with SB 67.

MOTION: **SEN. MIKE FOSTER MOVED ADOPTION OF AMENDMENTS 56104.ajm.**

DISCUSSION:

SEN. WILLIAM GLASER notes SB 67 is on the floor today; we need to ensure changes in that bill won't affect this bill. **Mr. Martin** indicates this amendment will work regardless of changes in SB 67; we may need to look at the effective date.

VOTE: **MOTION TO ADOPT AMENDMENTS 56104.ajm CARRIED UNANIMOUSLY.**

MOTION: **SEN. MIKE FOSTER MOVED HB 561 BE CONCURRED IN AS AMENDED.**

DISCUSSION:

SEN. FRED VAN VALKENBURG questions whether the bill is included in HB 2. **Mr. Miller** indicates the bill is funded in HB 2.

VOTE: **MOTION THAT HB 561 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY.**

AMENDMENTS 56110.ajm **EXHIBIT 6**
This exhibit is the composite for amendments adopted 4/7/97 for HB 561 (hb056101.ajm, hb056104.ajm, hb056105.ajm). The composite was given to the Committee Secretary following adjournment of the Committee.

EXHIBIT 2
DATE 4/2/97
HB 561

Amendments to House Bill No. 561
Third Reading Copy

Requested by Senators Devlin and Sprague
For the Committee on Taxation

Prepared by Jeff Martin
April 3, 1997

1. Title, line 13.
Strike: "AND"

2. Title, line 16.
Following: "MCA"
Insert: "; REPEALING ARM 24.11.831; AND PROVIDING EFFECTIVE DATES"

3. Page 1.
Following: line 16
Insert: "WHEREAS, the Legislature, not the Executive Branch, is the lawmaking branch of the state government under the Montana Constitution; and

WHEREAS, the Legislature may delegate its power to pass laws to the Executive Branch, which may then, within certain limits, adopt administrative rules that have the force and effect of law; and

WHEREAS, a rule may not conflict with a statute and is invalid if it does; and

WHEREAS, House Bill No. 98 (Ch. 48, L. 1995), enacted by the Fifty-fourth Legislature, excluded direct sellers from minimum wage, overtime, unemployment insurance, and workers' compensation requirements;

WHEREAS, the Legislature clearly intended in House Bill No. 98 that the federal definition of direct seller applies to relevant Montana statutes; and

WHEREAS, Rule 24.11.831, Administrative Rules of Montana, narrowed the scope of the federal definition of direct seller to subjectively limit a person's ability to qualify as a direct seller, thereby directly and clearly conflicting with statute; and

WHEREAS, an original purpose of this House Bill No. 561 was to codify the narrower definition of direct seller; and

WHEREAS, this House Bill No. 561 is the appropriate place to repeal Rule 24.11.831, Administrative Rules of Montana."

4. Page 5, lines 3 through 7.
Strike: ". As" on line 3 through "employee" on line 7
Insert: "as defined by 26 U.S.C. 3508"

5. Page 7, lines 27 through page 8, line 1.
Strike: ". As" on page 7, line 27 through "employee" on page 8, line 1
Insert: "as defined by 26 U.S.C. 3508"

6. Page 31, line 27 through page 32, line 2.

Strike: "." on page 31, line 27
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on page 31 line 27 through "employee" on page 32, line 2

7. Page 43, lines 24 through 29.
Strike: "." on page 43, line 24
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on line 24 through "employee" on line 29

8. Page 58.
Following: line 10
Insert: "NEW SECTION. **Section 33. Repealer.** ARM 24.11.831 is repealed."
Renumber: subsequent sections

9. Page 59, line 1.
Strike: "36"
Insert: "37"

EXHIBIT 3
DATE 4/1/97
HB 561

Amendments to House Bill No. 561
Third Reading Copy

Requested by Senators Devlin and Sprague
For the Committee on Taxation

Prepared by Jeff Martin
April 4, 1997

1. Title, line 13.
Strike: "AND"

2. Title, line 16.
Following: "MCA"
Insert: "; REPEALING ARM 24.11.831; AND PROVIDING EFFECTIVE DATES"

3. Page 1.
Following: line 16
Insert: "WHEREAS, House Bill No. 98 (Ch. 48, L. 1995), enacted by the Fifty-fourth Legislature, excluded direct sellers from minimum wage, overtime, unemployment insurance, and workers' compensation requirements;

WHEREAS, the Legislature in House Bill No. 98 adopted the federal definition of direct seller to apply to relevant Montana statutes; and

WHEREAS, Rule 24.11.831, Administrative Rules of Montana, (inadvertently) narrowed the scope of the federal definition of direct seller; and

WHEREAS, an original purpose of this House Bill No. 561 was to codify the narrower definition of direct seller; and

WHEREAS, this House Bill No. 561 is the appropriate place to repeal Rule 24.11.831, Administrative Rules of Montana."

4. Page 5, lines 3 through 7.
Strike: ". As" on line 3 through "employee" on line 7
Insert: "as defined by 26 U.S.C. 3508"

5. Page 7, lines 27 through page 8, line 1.
Strike: ". As" on page 7, line 27 through "employee" on page 8, line 1
Insert: "as defined by 26 U.S.C. 3508"

6. Page 31, line 27 through page 32, line 2.
Strike: "." on page 31, line 27
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on page 31 line 27 through "employee" on page 32, line 2

7. Page 43, lines 24 through 29.
Strike: "." on page 43, line 24
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on line 24 through "employee" on line 29

8. Page 58.

Following: line 10
Insert: "NEW SECTION. **Section 33. Repealer.** ARM 24.11.831 is repealed."
Renumber: subsequent sections

9. Page 59, line 1.
Strike: "36"
Insert: "37"

EXHIBIT 4
DATE 4/2/97
HB 561

Amendments to House Bill No. 561
Third Reading Copy

Requested by Senator Depratu
For the Committee on Taxation

Prepared by Jeff Martin
April 3, 1997

1. Title, line 13.
Following: "AGENCY;"
Insert: "BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER TAXES;"
Strike: "AND"

2. Title, line 14.
Following: "39-51-301,"
Insert: "39-51-1105,"

3. Title, line 15.
Following: "39-51-1303,"
Insert: "39-51-1304,"

4. Title, line 16.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

5. Page 16, line 26.
Strike: "or employee"
Strike: "duty"
Insert: "responsibility"

6. Page 16, line 30.
Strike: "or employee"

7. Page 17, lines 1 and 2.
Strike: "or employee"

8. Page 17, line 3.
Strike: "authority, duty, and"

9. Page 17, line 4.
Following: ";"
Insert: "and"

10. Page 17, lines 5 and 6.
Strike: subsection (ii) in its entirety
Renumber: subsequent subsection.

11. Page 17, lines 7 and 8.
Strike: "authority"
Insert: "responsibility"

12. Page 17, line 10.
Strike: "The"

18. Page 59, line 3.
Strike: ", 22"
Insert: "through 23"
Strike: "24"
Insert: "25"
Strike: "30"
Insert: "32"
Strike: "32"
Insert: "34"

19. Page 59, line 5.
Strike: "23"
Insert: "24"
Strike: "31"
Insert: "33"

EXHIBIT 5
DATE 4/7/97
HB 561

Amendments to House Bill No. 561
Third Reading Copy

Requested by Senator Devlin
For the Committee on Taxation

Prepared by Jeff Martin
April 4, 1997

1. Page 58, line 27.
Following: "**instruction.**"
Insert: "(1)"

2. Page 58.
Following: line 29
Insert: "(2) If Senate Bill No. 67 is passed and approved, then the amendment contained in 39-71-2503(3)(a) in [section 27] of the reference copy of Senate Bill No. 67, relating to the credit of the old fund liability tax to the account provided for in 39-71-2321, is void on January 1, 1999."

Insert: "In determining which corporate officer is liable, the"

13. Page 36.
Following: line 3
Insert: "**Section 21.** Section 39-51-1105, MCA, is amended to read:

"**39-51-1105. Liability of corporate officers ~~or employees~~ for taxes, penalties, and interest owed by corporation.** (1) The officer ~~or employee~~ of a corporation whose ~~duty~~ responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer ~~or employee~~ of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the ~~individual~~ corporate officer:

(i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment of taxes; or~~

~~(iii)~~ possessed the ~~fiscal authority~~ responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the ~~authority~~ responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes, penalties, and interest unpaid by the corporation.

(4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member.

(5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed.""
Renumber: subsequent sections

14. Page 38, line 21.
Strike: "or employee"

15. Page 38, line 25.
Strike: "or employee"

16. Page 39.
Following: line 2
Insert: "**Section 26.** Section 39-51-1304, MCA, is amended to

read:

"**39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, or liable corporate officer ~~or employee~~ or liable member or manager of a limited liability company referred to in 39-51-1105, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, liable corporate officer ~~or employee~~, or liable member or manager of a limited liability company referred to in 39-51-1105 under 39-51-1303 or this section, or both, to collect the delinquent taxes, penalties, and interest.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.""

Renumber: subsequent sections

17. Page 59, line 1.
Strike: "33"
Insert: "35"
Strike: "36"
Insert: "38"

EXHIBIT 6
DATE 4/7/97
HB 561

Amendments to House Bill No. 561
Third Reading Copy

For the Committee on Taxation

Prepared by Jeff Martin
April 7, 1997

1. Title, line 13.
Following: "AGENCY;"
Insert: "BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER TAXES;"
Strike: "AND"

2. Title, line 14.
Following: "39-51-301,"
Insert: "39-51-1105,"

3. Title, line 15.
Following: "39-51-1303,"
Insert: "39-51-1304,"

4. Title, line 16.
Following: "MCA"
Insert: "; REPEALING ARM 24.11.831; AND PROVIDING EFFECTIVE DATES"

5. Page 1.
Following: line 16
Insert: "WHEREAS, House Bill No. 98 (Ch. 48, L. 1995), enacted by the Fifty-fourth Legislature, excluded direct sellers from minimum wage, overtime, unemployment insurance, and workers' compensation requirements;

WHEREAS, the Legislature in House Bill No. 98 adopted the federal definition of direct seller to apply to relevant Montana statutes; and

WHEREAS, ARM 24.11.831 narrowed the scope of the federal definition of direct seller; and

WHEREAS, an original purpose of this House Bill No. 561 was to codify the narrower definition of direct seller; and

WHEREAS, this House Bill No. 561 is the appropriate place to repeal Rule 24.11.831, Administrative Rules of Montana."

6. Page 5, lines 3 through 7.
Strike: ". As" on line 3 through "employee" on line 7
Insert: "as defined by 26 U.S.C. 3508"

7. Page 7, lines 27 through page 8, line 1.
Strike: ". As" on page 7, line 27 through "employee" on page 8, line 1
Insert: "as defined by 26 U.S.C. 3508"

8. Page 16, line 26.
Strike: "or employee"
Strike: "duty"

Insert: "responsibility"

9. Page 16, line 30.
Strike: "or employee"

10. Page 17, lines 1 and 2.
Strike: "or employee"

11. Page 17, line 3.
Strike: "authority, duty, and"

12. Page 17, line 4.
Following: ";"
Insert: "and"

13. Page 17, lines 5 and 6.
Strike: subsection (ii) in its entirety
Renumber: subsequent subsection.

14. Page 17, lines 7 and 8.
Strike: "authority"
Insert: "responsibility"

15. Page 17, line 10.
Strike: "The"
Insert: "In determining which corporate officer is liable, the"

16. Page 31, line 27 through page 32, line 2.
Strike: "." on page 31, line 27
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on page 31 line 27 through "employee" on page 32, line 2

17. Page 36.
Following: line 3
Insert: "**Section 21.** Section 39-51-1105, MCA, is amended to read:

"**39-51-1105. Liability of corporate officers ~~or employees~~ for taxes, penalties, and interest owed by corporation.** (1) The officer ~~or employee~~ of a corporation whose ~~duty~~ responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer ~~or employee~~ of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the ~~individual~~ corporate officer:

(i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment of taxes; or~~

~~(iii)~~ possessed the ~~fiscal authority~~ responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the

~~authority~~ responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes, penalties, and interest unpaid by the corporation.

(4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member.

(5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed.""

Renumber: subsequent sections

18. Page 38, line 21.
Strike: "or employee"

19. Page 38, line 25.
Strike: "or employee"

20. Page 39.
Following: line 2
Insert: "**Section 26.** Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, or liable corporate officer ~~or employee~~ or liable member or manager of a limited liability company referred to in 39-51-1105, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, liable corporate officer ~~or employee~~, or liable member or manager of a limited liability company referred to in 39-51-1105 under 39-51-1303 or this section, or both, to collect the delinquent taxes, penalties, and interest.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.""
Renumber: subsequent sections

21. Page 43, lines 24 through 29.
Strike: "." on page 43, line 24
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on line 24 through "employee" on line 29

22. Page 58.
Following: line 10
Insert: "NEW SECTION. **Section 35. Repealer.** ARM 24.11.831 is repealed."
Renumber: subsequent sections

23. Page 58, line 27.
Following: "**instruction.**"
Insert: "(1)"

24. Page 58.
Following: line 29
Insert: "(2) If Senate Bill No. 67 is passed and approved, then the amendment contained in 39-71-2503(3)(a) in [section 27] of the reference copy of Senate Bill No. 67, relating to the credit of the old fund liability tax to the account provided for in 39-71-2321, is void on January 1, 1999."

25. Page 59, line 1.
Strike: "33"
Insert: "35"
Strike: "36"
Insert: "39"

26. Page 59, line 3.
Strike: ", 22"
Insert: "through 23"
Strike: "24"
Insert: "25"
Strike: "30"
Insert: "32"
Strike: "32"
Insert: "34"

27. Page 59, line 5.
Strike: "23"
Insert: "24"
Strike: "31"
Insert: "33"

Composite for amendments adopted 4/7/97 for HB561:

hb056101.ajm
hb056104.ajm
hb056105.ajm

Jeff Martin

SENATE STANDING COMMITTEE REPORT

April 7, 1997

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill 561 (third reading copy -- blue), respectfully report that House Bill 561 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Gerry Devlin, Chair

That such amendments read:

1. Title, line 13.
Following: "AGENCY;"
Insert: "BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER TAXES;"
Strike: "AND"

2. Title, line 14.
Following: "39-51-301,"
Insert: "39-51-1105,"

3. Title, line 15.
Following: "39-51-1303,"
Insert: "39-51-1304,"

4. Title, line 16.
Following: "MCA"
Insert: "; REPEALING ARM 24.11.831; AND PROVIDING EFFECTIVE DATES"

5. Page 1.
Following: line 16
Insert: "WHEREAS, House Bill No. 98 (Ch. 48, L. 1995), enacted by the Fifty-fourth Legislature, excluded direct sellers from minimum wage, overtime, unemployment insurance, and workers' compensation requirements;

WHEREAS, the Legislature in House Bill No. 98 adopted the federal definition of direct seller to apply to relevant Montana statutes; and

WHEREAS, ARM 24.11.831 narrowed the scope of the federal definition of direct seller; and

WHEREAS, an original purpose of this House Bill No. 561 was to codify the narrower definition of direct seller; and

WHEREAS, this House Bill No. 561 is the appropriate place to repeal Rule 24.11.831, Administrative Rules of Montana."

6. Page 5, lines 3 through 7.
Strike: ". As" on line 3 through "employee" on line 7
Insert: "as defined by 26 U.S.C. 3508"

Amd. Coord. _____
Sec. of Senate

_____
Senator Carrying Bill

731351SC.SRF

7. Page 7, lines 27 through page 8, line 1.
Strike: ". As" on page 7, line 27 through "employee" on page 8, line 1
Insert: "as defined by 26 U.S.C. 3508"

8. Page 16, line 26.
Strike: "or employee"
Strike: "duty"
Insert: "responsibility"

9. Page 16, line 30.
Strike: "or employee"

10. Page 17, lines 1 and 2.
Strike: "or employee"

11. Page 17, line 3.
Strike: "authority, duty, and"

12. Page 17, line 4.
Following: ";"
Insert: "and"

13. Page 17, lines 5 and 6.
Strike: subsection (ii) in its entirety
Renumber: subsequent subsection.

14. Page 17, lines 7 and 8.
Strike: "authority"
Insert: "responsibility"

15. Page 17, line 10.
Strike: "The"
Insert: "In determining which corporate officer is liable, the"

16. Page 31, line 27 through page 32, line 2.
Strike: "." on page 31, line 27
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on page 31 line 27 through "employee" on page 32, line 2

17. Page 36.
Following: line 3
Insert: "**Section 21.** Section 39-51-1105, MCA, is amended to read:

"**39-51-1105. Liability of corporate officers ~~or employees~~ for taxes, penalties, and interest owed by corporation.** (1) The officer ~~or employee~~ of a corporation whose ~~duty~~ responsibility it

is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer ~~or employee~~ of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the ~~individual~~ corporate officer:

(i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment of taxes; or~~

~~(iii)~~ possessed the ~~fiscal authority~~ responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the ~~authority~~ responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes, penalties, and interest unpaid by the corporation.

(4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member.

(5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed.""

Renumber: subsequent sections

18. Page 38, line 21.
Strike: "or employee"

19. Page 38, line 25.
Strike: "or employee"

20. Page 39.
Following: line 2
Insert: "**Section 26.** Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, or liable corporate officer ~~or employee~~ or liable member or manager of a limited liability company referred to in 39-51-1105, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, liable corporate officer ~~or employee~~, or liable member or manager of a limited liability company referred to in 39-51-1105 under 39-51-1303 or this section, or both, to collect the delinquent taxes, penalties, and interest.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.""

Renumber: subsequent sections

21. Page 43, lines 24 through 29.
Strike: "." on page 43, line 24
Insert: "as defined by 26 U.S.C. 3508"
Strike: "As" on line 24 through "employee" on line 29

22. Page 58.
Following: line 10
Insert: "NEW SECTION. **Section 35. Repealer.** ARM 24.11.831 is repealed."
Renumber: subsequent sections

23. Page 58, line 27.
Following: "**instruction.**"
Insert: "(1)"

24. Page 58.
Following: line 29
Insert: "(2) If Senate Bill No. 67 is passed and approved, then the amendment contained in 39-71-2503(3)(a) in [section 27] of the reference copy of Senate Bill No. 67, relating to the credit of the old fund liability tax to the account provided for in 39-71-2321, is void on January 1, 1999."

25. Page 59, line 1.
Strike: "33"
Insert: "35"
Strike: "36"
Insert: "39"

26. Page 59, line 3.
Strike: ", 22"
Insert: "through 23"
Strike: "24"
Insert: "25"
Strike: "30"
Insert: "32"
Strike: "32"
Insert: "34"

27. Page 59, line 5.
Strike: "23"
Insert: "24"
Strike: "31"
Insert: "33"

-END-

MONTANA SENATE
1997 LEGISLATURE
TAXATION COMMITTEE

ROLL CALL DATE 4/7/97

NAME	PRESENT	ABSENT	EXCUSED
MACK COLE	✓		
BOB DE PRATU	✓		
DOROTHY ECK	✓		
BILL GLASER	✓		
MIKE SPRAGUE	✓		
BARRY "SPOOK" STANG	✓		
FRED VAN VALKENBURG	✓		
MIKE FOSTER, VICE CHAIRMAN	✓		
GERRY DEVLIN, CHAIRMAN	✓		(✓)

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